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Tuesday
November 3, 1998

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 7145 of October 29, 1998

National Adoption Month, 1998

By the President of the United States of America

A Proclamation

Every child deserves a safe and loving family. But each year, thousands of American children grow up without such families, lacking the stability and sense of permanency they need to thrive. More than 100,000 such children—orphaned, abandoned, abused, or unable to remain at home for other serious reasons—will need homes in the next few years. Although foster care provides a good supportive temporary environment for these children, adoption can provide them with the sustained love and care of permanent families and can give adults the chance to open their hearts and homes to a child they will cherish.

My Administration has worked hard both to improve the experience of children awaiting adoption and to increase their chances of adoption. Last November, I signed into law the Adoption and Safe Families Act of 1997, which made sweeping changes in our Nation's child welfare system. This legislation underscores the importance of safety and permanency for children awaiting adoption and focuses on the urgency of finding adoptive families. In addition to achieving passage of this landmark legislation, we have made adoption easier by barring discrimination by race or ethnicity, by providing a tax credit for newly adoptive parents, and by ensuring that adoptive parents are covered by the Family and Medical Leave Act.

We must strengthen such efforts if we are to meet our national goal of doubling the number of adoptions by the year 2002. In addition, while adoption in America has increased in recent years, more than 25,000 young Americans each year reach the age of 18 and leave the child welfare system without permanent homes or families. This statistic tells us that we still have much to do. We must not only secure the placement of young children in families, but also move aggressively to place in permanent families our older children, as well. I have directed the Federal Government to work with State and local governments to continue identifying and removing the barriers that prevent young people from moving from our child welfare system into adoptive families.

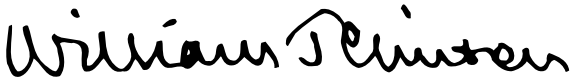
Working together—policymakers, government officials, family welfare agencies, religious and community organizations, and families—we can make a difference in the lives of thousands of children. My Administration will continue to support efforts to recruit and strengthen adoptive families and to shorten the time it takes to move children from foster care to permanent homes; to reduce the backlogs in our Nation's juvenile and family court systems; and to promote strong, supportive adoption programs that meet the needs of every child.

During National Adoption Month, let us recommit ourselves to the goal of finding a safe, permanent, and loving home for every child in need. Let us also honor the many caring families across our Nation who have opened their arms and their hearts to a child through adoption. By making such a profound and loving commitment to our Nation's most vulnerable children, they are also making a lasting investment in America's future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim November 1998 as National Adoption Month. I urge all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent, loving homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 98–29537
Filed 11–2–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AF14

Special Combinations for Tobacco Allotments and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change, an interim rule concerning tobacco farm combinations, published on May 14, 1998, (63 FR 26713). Comments were requested from interested parties, but none were received. The notice issued with the interim rule corrected a reference contained in a final rule published on February 24, 1998, (63 FR 9126) and by a regulation change, provided greater flexibility to tobacco farmers for special farm combinations. The interim rule also made certain clarifying changes to the regulations.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Jr., Agricultural Program Specialist, Tobacco Branch, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, telephone 202–720–0795.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR parts 780 and 711, as applicable, must be exhausted.

Paperwork Reduction Act

This final rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*). The information collections required in 7 CFR part 723 are currently being administered under OMB control number 0560–0058.

Effective Date of Rule

It has been determined for purposes of all limitations that might apply, including any provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, that this rule should be effective immediately. As the rule simply adopts an existing rule, provides additional flexibility to producers, and should not have any material adverse effect on anyone, it has been determined that it would be contrary to the public interest to delay the implementation date of the new regulations.

Background and Discussion

An interim rule published on May 14, 1998, (63 FR 26713), requested comments from interested parties on changes to 7 CFR 723.209, concerning tobacco farm combinations for administrative purposes. The notice issued with the interim rule also corrected a reference contained in a final rule, published on February 24, 1998, (63 FR 9126) concerning the same issue.

As for the regulations, the interim rule adopted clarifying language for § 723.209 and further amended § 723.209 to explicitly allow special combinations irrespective of whether any of the farms involved had a production flexibility contract under 7 CFR part 1412, and to allow for the relaxation of certain signature requirements. No comments were received in response to the interim rule and for the reasons given in the interim rule notice, it has been determined to adopt the interim rule as a final rule.

List of Subjects in 7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas, Penalties, Reconstitutions, Tobacco.

Final Rule

Accordingly, the interim rule amending 7 CFR part 723, published on May 14, 1998 (63 FR 26713) is hereby adopted as a final rule as published.

PART 723—[AMENDED]

Signed at Washington, DC, on October 26, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–29345 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–35–AD; Amendment 39–10866; AD 98–15–25]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC 135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–15–25, which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH Model EC 135 helicopters by individual letters. This AD supersedes AD 98–09–11, applicable to Eurocopter Deutschland GmbH Model EC 135 helicopters, that required, before further flight, a tail rotor drive shaft vibration survey and installation of a Fenestron Shaft Retrofit Kit; inspecting the tail rotor drive shaft bearing (bearing) attaching lock plates for bent-open tabs, and broken or missing slippage marks; and visually inspecting each bearing support for cracks. This AD requires the same actions as the superseded AD, however it changes the required compliance time for the repetitive inspections. This amendment is prompted by reports of loose bearings and attachment bolts. This condition, if not corrected, could result in loose bearing attachment bolts, or cracked bearing supports, which could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective November 18, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–15–25, issued on July 17, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 17, 1998, the FAA issued priority letter AD 98–15–25, applicable to Eurocopter Deutschland GmbH Model EC 135 helicopters, which requires, before further flight, a tail rotor drive shaft vibration survey and installation of a Fenestron Shaft Retrofit Kit L 535M3002 882; before further flight, and thereafter at intervals not to exceed 15 hours time-in-service (TIS), inspecting the bearing attaching lock plates for bent-open tabs, and broken or missing slippage marks; and before further flight, and thereafter at intervals not to exceed 3 hours TIS, visually inspecting each bearing support for cracks. That action was prompted by several reports of loose tail rotor drive shaft bearings and attachment bolts. This condition, if not corrected, could result in loose bearing attachment bolts, or cracked bearing supports, which could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter.

The FAA previously issued AD 98–09–11 on June 18, 1998 (63 FR 34796, June 26, 1998). AD 98–09–11 contained the same requirements as this AD except that this AD requires the repetitive visual inspection of each bearing support to be conducted at intervals not to exceed 3 hours TIS instead of the previous 15 hours TIS.

Since the issuance of AD 98–09–11, it has been determined that cracks can form in additional areas outside the bend radius of the bearing support, and that the cracks can form and propagate to failure within the previously-required 15 hours TIS inspection interval.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on Eurocopter Deutschland GmbH Model EC 135 helicopters. The LBA advises that loosening of bolt connections at bearing supports may lead to a tail rotor failure and loss of the helicopter. The LBA issued AD 1998–033/6, dated July 9, 1998, applicable to ECD Model EC 135 helicopters.

The FAA has reviewed Eurocopter EC 135 Alert Service Bulletin No. EC 135–53A–002, Revision 1, dated July 7, 1998, which describes procedures for visually inspecting the bearing supports, and Eurocopter EC 135 Alert Service Bulletin No. EC 135–53A–005, Revision 1, dated April 6, 1998, which describes procedures for measuring vibrations on the tail rotor drive shaft and replacing roller bearing attaching hardware at bearing locations.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provision of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Deutschland GmbH Model EC 135 helicopters of the same type design, this AD requires, before further flight, a tail rotor drive shaft vibration survey and installation of a Fenestron Shaft Retrofit Kit L 535M3002 882. Also, before further flight, and thereafter at intervals not to exceed 15 hours TIS, the AD requires inspecting the bearing attaching lock plates at each bearing support for bent-open tabs, and inspecting for broken or missing slippage marks. If a bearing attaching lock plate tab is bent open, or if a slippage mark is broken or missing, the FAA must be notified. Finally, the AD requires, before further flight, and thereafter at intervals not to exceed 3 hours TIS, inspecting the bearing supports for cracks in the areas shown in the attached Figure 1, from the bend radius to the attaching screws and rivets connecting the bearing supports to the tailboom. Use of a 6-power or higher magnifying glass and a bright light are required for this inspection. If a crack is found, the cracked bearing support is to be replaced with an airworthy bearing support.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the aircraft. Therefore, the installation and an inspection are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 17, 1998 to all known U.S. owners and operators of Eurocopter Deutschland GmbH Model EC 135 helicopters. These conditions still exist, and the AD is hereby

published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. The only difference between the priority letter AD and this published version of this AD is that a NOTE 2 is added to this AD to inform the reader that the procedures and limits for the vibration survey are contained in Eurocopter Deutschland document D/TA 13/98, Revision 01. This note is informational only and is not a substantive change.

The FAA estimates that 6 helicopters of U.S. registry will be affected by this AD. The 15 hours TIS inspection will take approximately 0.5 work hours and the 3 hours TIS inspection will take approximately 1.5 work hours. The average labor rate is $60 per work hour. The manufacturer has represented that they will accomplish this vibration survey and the installation of the Fenestron Shaft Retrofit kit at no cost to the owners/operators. Assuming the helicopters are operated 900 hours TIS per year, the total cost impact of the AD on U.S. operators for one year is estimated to be $172,800.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–35–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10632 (63 FR 34796, June 26, 1998) and by adding a new airworthiness directive to read as follows:

98–15–25 Eurocopter Deutschland: Amendment 39–10866. Docket No. 98–SW–35–AD. Supersedes AD 98–09–11, Amendment 39–10632, Docket No. 98–SW–18–AD.

Applicability: Model EC 135 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect loose tail rotor drive shaft bearing (bearing) attachment bolts, or cracked bearing supports, which could result in loss of drive to the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, conduct a tail rotor drive shaft vibration survey and install a Fenestron Shaft Retrofit Kit L 535M3002 882.

Note 2: Procedures and limits for the vibration survey are provided in Eurocopter Deutschland document D/TA 13/98 Revision 01.

(b) Before further flight, and thereafter at intervals not to exceed 15 hours time-in-service (TIS), at each bearing support:

(1) Inspect each bearing attaching lock plate that was installed with the Fenestron Shaft Retrofit Kit L 535M3002 882 for bent-open tabs.

(2) Inspect for broken or missing slippage marks that may indicate looseness or rotation of attaching hardware.

(3) If a lock plate tab is bent open on bearing supports A, B, or C (shown in Figure 1), or if slippage marks are broken or missing, contact the Manager, Rotorcraft Standards Staff, FAA, telephone (817) 222–5110, fax (817) 222–5961.

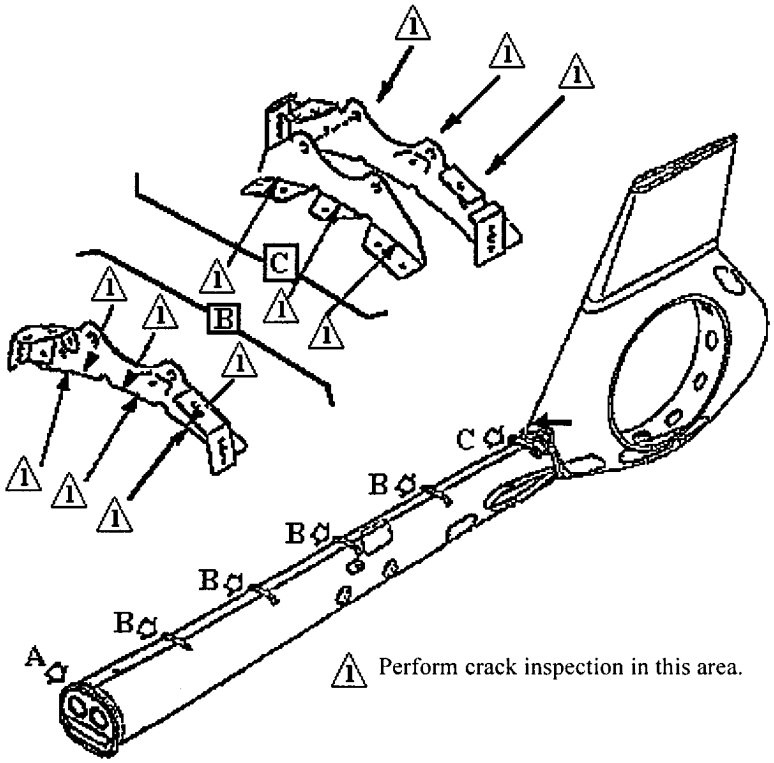

Figure 1

(c) Before further flight, and thereafter at intervals not to exceed 3 hours TIS, using a 6-power or higher magnifying glass and a bright light, visually inspect bearing supports B and C as shown in Figure 1, from the bend radius to the attaching screws and rivets connecting the bearing supports to the tailboom. If a crack is found, replace the bearing support with an airworthy bearing support.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on November 18, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–15–25, issued July 17, 1998, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 1998–033/6, dated July 9, 1988.

Issued in Fort Worth, Texas, on October 27, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–29375 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40608; FR–53; File No. S7–7–98]

RIN 3235–AH36

Reports To Be Made by Certain Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending Rule 17a–5 under the Securities Exchange Act of 1934 (''Exchange Act'') to require certain broker-dealers to file with the Commission and their designated examining authorities (''DEA'') a report prepared by an independent public accountant regarding the broker-dealer's process for preparing for the Year 2000. The report will provide valuable information on the existence and sufficiency of a broker-dealer's process for addressing Year 2000 Problems; provide an independent verification of the accuracy of the information contained in the broker-dealer's second Form BD–Y2K; aid the Commission in obtaining a more complete understanding of the industry's overall Year 2000 preparations; and identify firm-specific and industry-wide problems. The independent public accountant's report will be available to the public.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; Lester Shapiro, Senior Accountant, 202/942–0757; or Christopher M. Salter, Staff Attorney, 202/942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission views the Year 2000 Problem [1] as a serious issue that if not

[1] The Commission has defined the term ''Year 2000 Problem'' to include any erroneous result

addressed could disrupt the proper functioning of many of the world's computer systems. At midnight on December 31, 1999, unless the proper modifications have been made, computer systems may start to produce erroneous results because, among other things, the systems may incorrectly read the date ''01/01/00'' as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs. Due to the serious nature of this issue, both the broker-dealer industry and the Commission are working hard to address the industry's Year 2000 Problems.

As part of its ongoing efforts relating to the Year 2000, on July 2, 1998, the Commission amended Rule 17a–5 [2] to require certain broker-dealers to file reports with the Commission and their DEAs regarding their efforts to address Year 2000 problems.[3] The amendments to Rule 17a–5 require each broker-dealer with a minimum net capital requirement of $5,000 or greater to file the new Form BD–Y2K. Part I of Form BD–Y2K is a check-the-box Year 2000 questionnaire. Each broker-dealer with a minimum net capital requirement of $100,000 or greater is also required to file Part II of Form BD–Y2K, which requires a narrative discussion of its efforts to address Year 2000 Problems. Form BD–Y2K is required to be filed no later than August 31, 1998, reflecting the broker-dealer's Year 2000 efforts as of July 15, 1998, and no later than April 30, 1999, reflecting the broker-dealer's Year 2000 efforts as of March 15, 1999.

In the Adopting Release, the Commission deferred consideration of its original proposal to require certain assertions by a broker-dealer regarding its process for addressing Year 2000 Problems be attested to or verified in some manner by an independent public accountant. In a Companion Release, also issued on July 2, 1998, the Commission solicited additional comments on the appropriate independent public accountant review, including comments on the feasibility and desirability of an agreed-upon procedures engagement in which an independent public accountant would follow certain established procedures as an independent check on a broker-dealer's assertions on the Form BD–Y2K.[4]

The Commission received 27 comment letters regarding either the appropriate scope of the independent public accountant review or the feasibility and desirability of an agreed-upon procedures engagement.[5] Twenty-two of the letters responded to the proposed attestation requirement with the majority of the commenters expressing concern about the scope and workability of an attestation review.[6] Five letters were received in response to the Commission's second solicitation of comments on the appropriate scope of the independent public accountant's review. The letters received in response to the second solicitation were generally opposed to any additional reporting or regulatory requirements. However, a number of the commenters indicated that an agreed-upon procedures approach mitigated some of their concerns regarding the proposed attestation review requirement. After considering the comments received, the Commission is adopting the proposed amendments regarding engagement of an independent public accountant with the changes discussed below.

II. Description of the Proposed Rule Amendments

Under the Commission's original proposal, a broker-dealer with a minimum net capital requirement of $100,000 or greater would have been required to make certain specific assertions as part of its second Year 2000 report regarding its efforts to address Year 2000 Problems.[7] In addition to making the assertions, the broker-dealer would have been required to engage an independent public accountant to attest to whether there was a reasonable basis for these assertions.

III. Discussion of Final Rule Amendments

A. Independent Public Accountant Review

The American Institute of Certified Public Accountants (''AICPA''), among other commenters, stated that the proposed attestation report would be difficult for independent public accountants to provide. The AICPA said that some of the required broker-dealer assertions are not appropriate for accountant attestation because the assertions are not capable of reasonably consistent measurement against reasonable criteria. Currently, there are no uniform, well established criteria related to Year 2000 remediation efforts. The lack of established criteria would likely result in significant variation in the examination procedures performed by independent public accountants and thus would reduce the usefulness of the attestation reports. In addition, the AICPA expressed concern that the purpose and conclusions of the attestation report could be misunderstood. The AICPA was primarily concerned that uninformed users of the attestation reports would place undue reliance on them. Several other commenters also expressed concern that independent public accountants probably do not have the expertise required to properly evaluate the broker-dealer's Year 2000 efforts and that requiring an attestation engagement would be burdensome.

The Commission believes that requiring a broker-dealer to file a report prepared by an independent public accountant will benefit the Commission's and the securities industry's efforts to prepare for the Year 2000 by improving the accuracy of the broker-dealer's second Year 2000 report and by encouraging the broker-dealer to proceed expeditiously with its efforts to address Year 2000 Problems. The information will help the Commission to have a more complete understanding of the industry's overall Year 2000 preparations and to identify firm-specific and industry-wide problems. Information in the reports will also help

caused by any computer software: (1) Incorrectly reading the date ''01/01/00'' or any year thereafter; (ii) incorrectly identifying a date in the year 1999 or any year thereafter; (iii) failing to detect that the Year 2000 is a leap year, and (iv) any other computer error that is directly or indirectly related to (i), (ii), or (iii) above.

[2] 17 CFR 240.17a–5.

[3] Release No. 34–40162 (July 2, 1998), 63 FR 37668 (July 13, 1998) (''Adopting Release'').

[4] Release No. 34–40164 (July 2, 1998), 63 FR 37709 (July 13, 1998) (''Companion Release'').

[5] All comment letters are available in File No. S7–7–98 at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. The comment period closed on April 27, 1998. *See also* Release No. 34–39858 (extending the comment period from April 13, 1998 to April 27, 1998) *See also* Release No. 34–40164 (reopening the comment period on the appropriate scope of independent public accountant review until August 12, 1998).

[6] Release Nos. 34–39724; IC–23059; IA–1704 (March 5, 1998), 63 FR 12056 (March 12, 1998) (''Proposing Relase'').

[7] Each broker-dealer would have been required to assert: (1) Whether it has developed written plans for preparing and testing its computer systems for potential Year 2000 Problems; (2) whether the board of directors, or similar body, has approved these plans, and whether a member of the broker-dealer's board of directors, or similar body, is responsible for executing the plans' (3) whether its Year 2000 remediation plans address all domestic and international operations, including the activities of its subsidiaries, affiliates, and divisions; (4) whether it has assigned existing employees, hired new employees, or engaged third parties to execute its Year 2000 remediation plans; and (5) whether it has conducted internal and external testing of its Year 2000 solutions and whether the results of those tests indicate that the broker-dealer has modified its software to correct Year 200 problems. Many of the issues covered by the assertions were adopted as questions in Part II of Form BD–Y2K.

the Commission focus its Year 2000-related efforts for 1999 on particular industry segments or firms that appear to pose the greatest risk of not being ready for the Year 2000. In sum, the rule amendments will enable the Commission to take a more active role in reducing the Year 2000 risk to the securities industry.

However, the Commission has modified the scope of the independent public accountant review. The rule adopted today requires each broker-dealer that is required to file Part II of Form BD–Y2K by April 30, 1999, to include with that filing a report prepared by an independent public accountant regarding the broker-dealer's process for addressing Year 2000 Problems. The independent public accountant's report must be prepared in accordance with standards that have been reviewed by the Commission and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards. Such standards do not have to involve an attestation engagement, as the Commission originally proposed.

In conjunction with adopting the independent public accountant reporting requirement, the Commission has reviewed the procedures included in the Statement of Position 98–8, issued by the Auditing Standards Board.[8] An independent public accountant's report prepared in accordance with SOP 98–8 would satisfy the independent public accountant reporting requirements adopted by the Commission today.[9] Statement of Position 98–8 is discussed in more detail in part III. B below.

B. Statement of Position 98–8

The AICPA, along with other commenters, suggested that an ''agreed-upon procedures'' engagement, instead of an attestation engagement, would more effectively meet the Commission's objectives. Pursuant to such an engagement, a broker-dealer would engage an independent public accountant to perform and report on specific procedures designed to meet the Commission's objectives. This would eliminate the variability of examination procedures performed by independent public accountants and increase the consistency of the reports received by the Commission. In addition, other commenters indicated that an agreed-upon procedures engagement would be less time-consuming, less costly, and less disruptive operationally than the attestation approach.

SOP 98–8 addresses commenters' concerns regarding an attestation engagement by providing independent public accountants a list of procedures to follow when preparing its report on the broker-dealer's process for addressing Year 2000 Problems. More specifically, these procedures require an independent public accountant to consider the broker-dealer's plan for addressing Year 2000 Problems, its efforts to repair its affected computer systems, its tests of completed repairs, and its efforts to monitor the progress of the Year 2000 project. In addition, through SOP 98–8 the independent public accountant is provided a reporting format to use when reporting the results of executing the specified procedures. Finally, SOP 98–8 provides the independent public accountant with guidance on how to execute the procedures and how to report any exceptions identified.

The Commission believes that the procedures and reporting format contained in SOP 98–8 and the execution of the procedures by an independent public accountant (i) will provide valuable information on the existence and sufficiency of a broker-dealer's process for addressing Year 2000 Problems; (ii) will provide an independent verification of the accuracy of the information contained in the broker-dealer's second Form BD–Y2K; (iii) will aid the Commission in obtaining a more complete understanding of the industry's overall Year 2000 preparations; and (iv) will identify firm-specific and industry-wide problems.

C. Public Availability

The proposed rules would have made the independent public accountant's attestation report available to the public. The AICPA, in addition to other commenters, expressed concerns that some users of these reports could place undue reliance on the reports and that the technical nature of the reports could confuse investors. However, the Commission believes that the public's interest is best served by requiring full and open disclosure. Allowing the public, particularly other broker-dealers and counterparties, to have access to the independent public accountant's report will assist interested persons in determining whether a broker-dealer has a process for addressing Year 2000 Problems. For example, after reviewing an accountant's report regarding a counterparty, another broker-dealer might request additional information or assurances if the counterparty does not appear to be taking the steps necessary to be Year 2000 compliant. In the absence of such assurances, the other broker-dealer could determine whether it wishes to continue its dealings with that counterparty.

The rule amendments adopted by the Commission today provide that the public will have access to the independent public accountant's report.[10] In addition, the Commission or its staff, after reviewing Forms BD–Y2K, accompanying accountant's reports, and other pertinent information, may make findings or conclusions or compile information from filings by individual firms and make firm-specific, aggregate, or derivative information available to the public, Congress, or other members of the securities industry. The Commission notes, however, that the accountant's report has a specific regulatory purpose and is not intended to express an opinion or finding regarding whether a broker-dealer is Y2K compliant. The following excerpts from the sample ''Independent Accountant's Report on Applying Agreed-Upon Procedures'' attached to the AICPA's SOP makes clear the limitations of the accountant's role and report:

> We have performed the procedures enumerated below as specified in the American Institute of Certified Public Accountants' (AICPA's) Statement of Position 98–8, which were agreed to by ABC Broker-Dealer (hereinafter referred to as the entity) to assist the users in evaluating the entity's assertions in Parts I and II of Form BD–Y2K (Form BD–Y2K) as of March 15, 1999, prepared and filed pursuant to the requirements of SEC rule 17a–5. Pursuant to Securities and Exchange Commission (SEC) Release No. 34–40608 these agreed-upon procedures will satisfy the SEC's regulatory requirements. This report is issued solely for these regulatory purposes.

[8] The AICPA's Auditing Standards Board is responsible for the promulgation of auditing and attestation standards and procedures to be observed by members of the AICPA in accordance with the Institute's Bylaws and Code of Professional Conduct.

[9] Parties wishing to have the Commission review standards for the preparation of the independent public accountant's report should submit the standards to the Commission's Secretary at its principal office in Washington, DC. In reviewing SOP 98–8, the Commission considered whether it required the independent public accountant to consider the broker-dealer's plan for addressing Year 2000 problems, its efforts to repair affected computer systems, tests of completed repairs, and its efforts to monitor the progress of the broker-dealer's Year 2000 project.

[10] An agreed-upon procedures engagement conducted in accordance with SOP 98–8 must also comply with SSAE No. 4, *Agreed-Upon Procedures Engagements. See* AICPA, Professional Standards, Vol. 1, AT Sec. 600. SSAE No. 4 states, among other things, that a report on the performance of agreed-upon procedures should restrict the use of the report to parties specifically identified as users within the report. However, SSAE No. 4 does not limit who may have access to the report.

This agreed-upon procedures engagement was performed in accordance with standards established by the AICPA. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the entity's assertions included in Form BD–Y2K referred to in the introductory paragraph of this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. Our procedures also do not provide assurance that the entity is or will be year 2000 ready, that its year 2000 project plans will be successful in whole or in part, or that parties with which the entity does business will be year 2000 ready.

This report is intended solely for the information and use of the Board of Directors and Management of ABC Broker-Dealer, the Securities and Exchange Commission, and ABC Broker-Dealer's designated self-regulatory organization and is not intended to be and should not be used by anyone other than these specified parties.

D. Timing

The amendments to Rule 17a–5 adopted by the Commission in July 1998 require a broker-dealer to file its second Year 2000 report with the Commission and the broker-dealer's DEA by April 30, 1999, without regard to when its fiscal year ended.[11] The rule adopted today also requires the broker-dealer to file the report prepared by the independent public accountant by April 30, 1999, reflecting the broker-dealer's Year 2000 efforts as of March 15, 1999.

IV. Costs and Benefits

In the Proposing Release, the Commission requested that commenters provide analysis and data supporting the costs and benefits of the proposed amendments. In a second release soliciting additional comments on the appropriate scope of the independent public accountant's review, the Commission solicited comments on the desirability and feasibility of an agreed-upon procedures approach. Several commenters indicated that the Commission's cost estimates with regard to the attestation report were too low. However, no commenters provided detailed information or data as to the costs of the proposed amendments.

As discussed more fully in part III.A. above, the Commission is adopting a requirement that certain broker-dealers file with their second Form BD–Y2K a report prepared by an independent public accountant regarding the broker-dealer's process for addressing Year 2000 Problems. In addition, the Commission has determined that an independent public accountant's report prepared in accordance with SOP 98–8 will meet its regulatory objectives. It is important to note that the independent public accountant review adopted by the Commission today is significantly less in scope than the proposed attestation review. As a result, the aggregate cost of complying with the rule should be less.

In the Proposing Release, the Commission estimated that on average a broker-dealer would spend 20 hours working with its independent public accountant and that the cost of the attestation report could range from $5,000 to $200,000 with the average cost likely to be $25,000. Without providing cost figures or analysis, commenters indicated that these estimated costs were too low. Consequently, Commission staff contacted a number of accounting firms and the AICPA to obtain detailed data on the costs to broker-dealers of the independent public accountant's report. However, the parties contacted would not formally submit cost data.

Therefore, despite the reduced scope of the independent public accountant review adopted by the Commission today and based on the comments received and the efforts of its staff, the Commission is retaining its original cost estimates. The Commission estimates that the total cost to the industry of broker-dealers obtaining and filing the independent public accountant's reports is $66,150,000. This is based on 2,450 respondents spending on average 20 hours at $100 per hour working with their accountants and spending on average $25,000 in additional accounting fees. It is important to note that this is a total cost estimate and not an annual cost. Broker-dealers will only be required to file one independent public accountant's report. The Commission further notes that by limiting the requirement to those broker-dealers who pose the greatest risk to customers and the market if they are not Year 2000 compliant, the Commission has not imposed this burden on approximately 88% of small broker-dealers. For more information on the amendments effect on small broker-dealers see part VI below.

No commenters specifically addressed the potential benefits of the amendments, and the Commission has not been able to quantify those benefits.[12] The Commission is aware of the significant effort the securities industry has put forth and the progress it has made but believes that significant progress still needs to be made by the securities industry to be ready for the Year 2000.

As previously discussed in part III. A above, the Commission believes that a regulatory requirement to file an independent public accountant's report will improve the accuracy of the broker-dealer's second Year 2000 report and should encourage the broker-dealer to proceed expeditiously with its efforts to prepare for the Year 2000. The Commission will use the reported information to obtain a more complete understanding of the industry's overall Year 2000 preparations and to identify firm-specific and industry-wide problems. Information in the reports will help the Commission focus its Year 2000-related efforts for 1999 on particular industry segments or firms that appear to pose the greatest risk of non-compliance and will enable the Commission to take a more active role in reducing the Year 2000 risk to the securities industry. In light of the seriousness and pervasiveness of the Year 2000 Problem and in light of the systemic risk it presents to the securities industry and investors, the Commission believes the significant benefits that will result from the independent public accountant's report justify the costs.

V. Efficiency, Competition, and Capital Formation

Section 23(a) of the Exchange Act[13] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any such rule would have on competition and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Furthermore, section 3(f) of the Exchange Act[14] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has

[11] The second Year 2000 report is required to reflect a broker-dealer's Year 2000 efforts as of March 15, 1999. *See* Adopting Release, 63 FR 37709 (July 13, 1998).

[12] One commenter expressed concern that the cost of obtaining the independent public accountant's report would outweigh its benefits. However, the commenter did not provide any specific information or analysis.

[13] 15 U.S.C. 78w (a)(2).

[14] 15 U.S.C. 78c.

considered the amendments to Rule 17a–5 in light of the standards cited in sections 3 and 23 (a)(2) of the Exchange Act. In addition, the Commission sought comments on the proposed amendments' effect on competition, efficiency, and capital formation. No commenters specifically addressed the issue of whether the proposed accountant's review would affect competition and no comments were received regarding the proposed amendment's effect on efficiency and capital formation.

In the Proposing Release, the Commission stated that the proposed amendments should not unduly burden competition. The Commission has drafted the rule amendments so as to minimize their impact on competition. The Commission has, in adopting the independent public accountant's reporting requirement, differentiated between broker-dealers based upon their size, type of business, and relative risk they pose to customers and the market if they are not Year 2000 compliant. Broker-dealers that do not meet the $100,000 minimum net capital reporting threshold are not required to file the accountant's report.[15] The Commission believes that the proposed amendments do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

The Commission believes that the amendments should increase the efficiency and effectiveness of the Commission's efforts to prepare for the Year 2000 by enabling the Commission to obtain a more complete understanding of the industry's overall Year 2000 preparations and to identify firm-specific and industry-wide problems. Information in the reports will also help the Commission focus its Year 2000-related efforts for 1999 on particular industry segments or firms that appear to pose the greatest risk of non-compliance. In addition, the Commission believes that the amendments do not adversely affect capital formation. However, failure on the part of the Commission and the securities industry to adequately prepare for the Year 2000 could adversely affect capital formation at the beginning of the next millennium.

VI. Summary of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis (''FRFA'') concerning the amendments to Rule 17a–5 has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''RFA''), as amended by Public Law No. 104–121, 110 Stat. 847, 864 (1996), 5 U.S.C. 604. The FRFA notes that the amendments to Rule 17a–5 will require broker-dealers to file with their second Form BD–Y2K a report prepared by an independent public accountant regarding the broker-dealer's process for addressing Year 2000 Problems.

The Commission received no comments on the Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the Proposing Release, and no comment letters specifically addressed the IRFA. However, certain commenters expressed concern about the estimated costs associated with obtaining the independent public accountant's attestation.

As discussed more fully in the FRFA, the rule will affect small entities. When used with reference to a broker or dealer, the Commission has defined the term ''small entity'' to mean a broker or dealer (''small broker-dealer'') that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to section 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.[16]

The Commission has drafted the rule amendments so as to minimize their impact on small broker-dealers while enhancing investor protection and minimizing any impact on competition by excluding those broker-dealers who do not pose the greatest risk to customers and the market. The rule amendments require broker-dealers with a minimum net capital requirement of $100,000 or greater to file a report prepared by an independent public accountant regarding the broker-dealer's process for addressing Year 2000 Problems. The type of business conducted by a broker-dealer who is required to maintain minimum net capital of $100,000 or greater generally poses a greater risk to customers and the markets if the broker-dealer is not Year 2000 compliant than a broker-dealer conducting a more limited securities business.

Based on FOCUS data for the fourth quarter of 1997, the latest information available, the Commission estimates that there are approximately 5,200 small broker-dealers. Of these 5,200 small broker-dealers, approximately 600 are affected by the amendments to Rule 17a–5. As noted in the cost-benefit section above, the Commission estimates that each of the affected broker-dealers will spend approximately 20 hours providing information to and assisting their independent public accountant review the broker-dealers process for addressing Year 2000 Problems. In addition, each affected small broker-dealer will incur $25,000 in additional accounting fees.

Thus, by limiting the requirement to file an independent public accountant's report to those broker-dealers who have a minimum net capital requirement of $100,000 or greater, the Commission has imposed no burden on approximately 4,600 (88%) small broker-dealers.

The FRFA notes that it would be difficult to further simplify, consolidate, or adjust compliance standards for small broker-dealers and be able to effectively monitor the securities industry's efforts to prepare for the Year 2000. The Commission believes that exempting those broker-dealers who do not pose the greatest risk to customers and the markets if they are not Year 2000 compliant strikes the appropriate balance between the need to protect investors and the need to minimize the impact on small broker-dealers. The Commission also considered the use of performance rather than design standards. However, the Commission concluded that it would be inconsistent with the purpose of the rule to use performance standards to specify different requirements for small entities.

A copy of the FRFA may be obtained by contacting Christopher M. Salter, Staff Attorney, U.S. Securities and Exchange Commission, Mail Stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

VII. Paperwork Reduction Act

The amendments to Rule 17a–5 adopted by the Commission today also amended the following collection of information within the meaning of the Paperwork Reduction Act of 1995

[15] Generally, the type of business conducted by a broker-dealer who is required to maintain minimum net capital of $100,000 or greater poses a greater risk to customers and the markets if the broker-dealer is not Year 2000 compliant than a broker-dealer conducting a more limited securities business.

[16] 17 CFR 240.0–10(c). The Commission recently amended its small business definition for broker-dealers. *See* 63 FR 35508 (June 30, 1998). Because the IRFA for this proposal relied on the old definition (which is broader), the FRFA also relies on the old definition.

(''PRA''): [17] Reports to be Made by Certain Brokers and Dealers; Rule 17a–5(e)(5)—Year 2000 Problem.[18] Accordingly, the amendment to the collection of information requirement regarding the accountant's report was submitted to the Office of Management and Budget (''OMB'') for review and was approved by OMB which assigned the following control number 3235–0511.

The Proposing Release solicited comments on the proposed collection of information. No comments were received that specifically addressed the PRA submission. However, as discussed in sections III. and IV. above, the Commission received suggestions that would improve the reporting requirement. Based upon these suggestions, the collection of information has been adjusted as described in section III. above and is in accordance with Section 3507 of the PRA.[19] These adjustments include reducing the scope of accountant's review to increase the consistency, accuracy and comparability of the information collected. In addition, the adjustments will reduce the time required to summarize, track, analyze, and report the information received.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. Broker-dealers are required to comply with the collection of information pursuant to the amendments to Rule 17a–5 and the information is necessary to provide the Commission with a better understanding of the security industry's readiness for the Year 2000. The information collected pursuant to the amendments to Rule 17a–5 will be public.

As previously discussed, the Commission has reduced the scope of the independent public accountant's review. However, after carefully considering the comments received, the Commission is retaining its original estimate of the burden hours associated with obtaining the independent public accountant's report. Thus, the Commission estimates that under the final amendments, a broker-dealer will, on average, spend 20 hours obtaining the independent public accountant's report. This is in addition to the two hours a broker-dealer will spend preparing Part I of Form BD–Y2K and for those broker-dealers with a minimum net capital requirement of $100,000 or greater, the 35 hours they will spend preparing Part II of Form BD–Y2K.

The total annualized burden to the securities industry is estimated to be 146,750 hours. This is based on approximately 6,000 respondents spending on average two hours completing Part I of Form BD–Y2K; approximately 2,450 respondents spending on average 35 hours preparing Part II of Form BD–Y2K and an additional 20 hours working with their independent public accountant on the independent public accountant's report.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission is adopting amendments to § 240.17a–5 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Final Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.17a–5 by adding paragraph (e)(5)(vi) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(e) *Nature and form of reports.* * * *

(5) * * *

(vi) No later than April 30, 1999, every broker or dealer required to file Part II of Form BD–Y2K (§ 249.618 of this chapter) pursuant to paragraph (e)(5)(iii)(B) of this section and required to file audited financial statements pursuant to paragraph (d) of this section shall file with its Form BD–Y2K an original and two copies of a report prepared by an independent public accountant regarding the broker's or dealer's process, as of March 15, 1999, for addressing Year 2000 Problems with the Commission's principal office in Washington, DC and one copy of the accountant's report with the designated examining authority of the broker or dealer. The independent public accountant's report shall be prepared in accordance with standards that have been reviewed by the Commission and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards.

* * * * *

Dated: October 28, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29343 Filed 11–2–98; 8:45 am]

BILLING CODE 8010–01–U

[17] 44 U.S.C. 3501 *et seq.*

[18] The Office of Management and Budget (''OMB'') control number is 3235/0511.

[19] 44 U.S.C. 3507

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0214]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,9-dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione (C.I. Pigment Red 202) as a colorant for polymers used in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: The regulation is effective November 3, 1998; submit written objections and requests for a hearing December 3, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 5, 1996 (61 FR 35229), FDA announced that a food additive petition (FAP 6B4512) had been filed by Ciba-Geigy Corp., 335 Water St., Newport, DE

19804 (currently, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,9-dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione (C.I. Pigment Red 202) as a colorant in polymers used in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of *para*-chloroaniline, a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as *para*-chloroaniline, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called ''general safety clause'' of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additive anticancer, or Delaney, clause of the act further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not constituents of the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, 2,9-dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione, will result in exposure to no greater than 2.5 parts per billion of the additive in the daily diet (3 kilogram (kg)), or an estimated daily intake of 7.5 microgram per person per day (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by *para*-chloroaniline, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *para*-chloroaniline has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

A. Para-Chloroaniline

FDA has estimated the exposure to *para*-chloroaniline from the petitioned use of the additive as a colorant in polymers to be 20 parts per trillion in the daily diet (3 kg), or 60 nanograms per person per day (ng/p/d) (Ref. 1). The agency used data from a carcinogenicity study of *para*-chloroaniline conducted by the National Toxicology Program (NTP) (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The results of the NTP carcinogenicity studies on this chemical demonstrated that administration of the test material to Fisher 344 rats by gavage caused increased incidence of splenic sarcomas in male rats.

Based on the agency's estimated exposure to *para*-chloroaniline of 60 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 1×10^{-8}, or 1 in 100 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to *para*-chloroaniline is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to *para*-chloroaniline would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of *para*-chloroaniline present as an impurity in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which *para*-chloroaniline may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to the impurity is very low, less than 1 in 100 million.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a colorant in polymers in contact with food is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget

under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at anytime on or before December 3, 1998, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated August 29, 1996, from the Chemistry Review Branch (HFS–247), to the file concerning FAP 6B4512, dietary concentrations of the additive and the impurity (*para*-chloroaniline).

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

3. Chhabra, R. S., Toxicology and Carcinogenesis Studies of *para*-Chloroaniline Hydrochloride in F344/N Rats and B6C3F1 Mice (Gavage Studies), National Toxicology Program, Technical Report Series No. 351, July 1989.

4. Report of the Quantitative Risk Assessment Committee, FDA, concerning ''Assessment of Carcinogenic upper-bound lifetime risk resulting from contamination by *para*-chloroaniline residues in C.I. Pigment Red 202 (Ciba-Geigy Corp.), FAP 6B4512, dates April 9, 1998.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * *	* * * *
2,9-Dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione (C.I. Pigment Red 202, CAS Reg. No. 3089–17–6).	For use at levels not to exceed 1.0 percent by weight of polymers.
* * *	* * * *

Dated: October 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29333 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs; Hyaluronate Sodium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Anika Therapeutics, Inc. The supplemental NADA provides for equine use of hyaluronate sodium injection containing 11 milligrams hyaluronate sodium per milliliter (mg/mL) rather than the currently approved 10 mg/mL.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis M. Bensley, Jr., Center For Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–4105.

SUPPLEMENTARY INFORMATION: Anika Therapeutics, Inc., 236 West Cummings Park, Woburn, MA 01810, formerly Anika Research, Inc., 160 New Boston St., Woburn, MA 01801, filed supplemental NADA 122–578 that provides for equine use of a 11-mg/mL Hyvisc (hyaluronate sodium) injection instead of the currently approved 10-mg/mL injection. The injection is for intra-articular use in horses for treatment of joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis. The drug is limited to use by or on the order of a licensed veterinarian. The supplemental NADA is approved as of September 30, 1998, and 21 CFR 522.1145 is amended in paragraph (a)(2) and by adding paragraph (f) to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

In addition, the sponsor has changed its name and address. The regulations are amended in 21 CFR 510.600(c) to

reflect the changes in sponsor name and address.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry ''Anika Research, Inc.'' and in paragraph (c)(2) in the entry ''060865'' by removing the sponsor name and address and inserting in its place ''Anika Therapeutics Inc., 236 West Cummings Park, Woburn, MA 01801''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 522.1145 is amended by revising paragraph (a)(2) and adding paragraph (f) to read as follows:

§ 522.1145 Hyaluronate sodium injection.

(a) * * *

(2) *Sponsor.* See 000009 in § 510.600(c).

* * * * *

(f)(1) *Specifications.* Each milliliter of sterile aqueous solution contains 11 milligrams of hyaluronate sodium.

(2) *Sponsor.* See 060865 in § 510.600(c).

(3) *Conditions of use*—(i) *Amount.* Small and medium-size joints (carpal, fetlock)—22 milligrams; larger joint (hock)—44 milligrams.

(ii) *Indications for use.* Treatment of joint dysfunction in horses due to noninfectious synovitis associated with equine osteoarthritis.

(iii) *Limitations.* For intra-articular injection in horses only. Treatment may be repeated at weekly intervals for a total of three treatments. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 25, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–29332 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F11

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Carbadox

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer Animal Health, Inc. The supplemental NADA provides for the establishment of a 42-day slaughter withdrawal period for use of carbadox in swine feed.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1652.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, is sponsor of NADA 41–061 that provides for the use of Mecadox® 10 (carbadox) Type A medicated article used to make Type B and Type C medicated swine feeds. Mecadox® is indicated for the control of bacterial swine enteritis, increased rate of weight gain, and improved feed efficiency. The sponsor filed a supplemental NADA that provides for the establishment of a withdrawal period of 42 days in swine and a limitation against use in pregnant swine or swine intended for breeding purposes. The supplemental NADA is approved as of October 5, 1998, and the regulations are amended in 21 CFR 558.115(d)(1)(ii) and (d)(2)(ii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.115 is amended by revising paragraphs (d)(1)(ii) and (d)(2)(ii) to read as follows:

§ 558.115 Carbadox.

* * * * *

(d) * * *

(1) * * *

(ii) *Limitations.* Not for use in pregnant swine or swine intended for breeding purposes. Do not feed to swine within 42 days of slaughter.

(2) * * *

(ii) *Limitations.* Not for use in pregnant swine or swine intended for breeding purposes. Do not feed to swine within 42 days of slaughter.

* * * * *

Dated: October 25, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–29334 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. 98N–0171]

Medical Devices; Humanitarian Use of Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations governing humanitarian use devices (HUD's). These amendments are being made to implement provisions of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Center for Devices and Radiological Health (HFZ–4dd), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 26, 1996 (61 FR 33232), FDA published a final rule prescribing the procedures for submitting humanitarian device exemption (HDE) applications, amendments, and supplements; procedures for obtaining an extension of the exemption; and the criteria for FDA review and approval of HDE's. This rule amended part 814 (21 CFR part 814) of FDA's premarket approval regulations.

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115). Section 2dd of FDAMA made the following changes to section 520(m) of the act (21 U.S.C. 360j(m)):

(1) FDAMA added a new provision to section 520(m) of the act that requires FDA to issue an order approving or denying an HDE within 75 days after receiving the application.

(2) FDAMA provided for an exemption from the requirement that a HUD may not be used without approval from an institutional review board (IRB) for cases in which a physician determines in an emergency situation that approval cannot be obtained in time to prevent serious harm or death to a patient. In such cases, the physician must notify the chairperson of the IRB after using the device. The notification must include the name of the patient, the date on which the device was used, and the reason for the use.

(3) FDAMA eliminated the requirement that the sponsor of an HDE obtain approval for continued use every 18 months. Instead, FDA may require a sponsor to demonstrate continued compliance with the requirements of section 520(m) of the act, if FDA believes that such a demonstration is necessary to protect the public health, or if FDA has reason to believe that the criteria for exemption are no longer met.

(4) FDAMA added a provision to section 520(m) of the act stating that FDA may suspend or withdraw an HDE approval only after providing notice and an opportunity for an informal hearing.

(5) FDAMA eliminated the ''sunset'' provision in section 520(m) of the act, under which new approvals of HDE's would not have been permitted 5 years after the effective date of the rule originally implementing section 520(m) of the act.

Section 2dd of FDAMA became effective on February 19, 1998. In the **Federal Register** of April 17, 1998, FDA published a direct final rule (63 FR 19185) and a companion proposed rule (63 FR 19196) on humanitarian use devices to amend the existing regulations to conform to amendments made by FDAMA to section 520(m) of the act. FDA published the direct final rule because the agency anticipated that it would receive no significant adverse comments, and because the agency believed the rule contained noncontroversial changes. FDA stated that if the agency received any significant adverse comment regarding the direct final rule, FDA would publish a document withdrawing the direct final rule within 30 days after the comment period ended and proceed to respond to all the comments under the companion proposed rule using usual notice-and-comment procedures. Any comments received under the companion proposed rule would be considered as comments regarding the direct final rule.

FDA received significant adverse comment in response to the direct final rule. Therefore, FDA withdrew the direct final rule in the **Federal Register** of July 31, 1998 (63 FR 40825), and is publishing this final rule, which responds to the comments received and modifies the proposal in response to those comments.

II. Highlights of the Final Rule

The following provisions of the proposed rule have not been changed:

Part 814 has been amended in § 814.100 to implement new section 520(m)(5) of the act, which provides that FDA may require an HDE applicant to demonstrate continued compliance with the HDE requirements, if the agency believes that such a demonstration is necessary to protect the public health or if FDA has reason to believe the criteria for exemption are no longer met. This section of the regulation has also been modified to reflect the FDAMA provision that requires FDA to provide notice and an opportunity for an informal hearing before withdrawing or suspending approval of an HDE.

Section 814.104 has been amended to repeal the sunset provision for submitting an original application as provided for in new section 520(m)(5) of the act.

In addition to the changes required by FDAMA, FDA is amending § 814.104(b)(5) to allow a sponsor who is charging more than $250 per HUD, to submit, in lieu of a report by an independent certified accountant (CPA), an attestation by a responsible individual of the organization, verifying that the amount charged does not exceed the device's cost of research, development, fabrication, and distribution. The submission of any report or attestation is unnecessary for HUD's for which an HDE applicant is charging $250 per HUD or less because, in most circumstances, a charge for a HUD that is $250 or less is evidence that the charge is unlikely to exceed the cost of research, development, fabrication, and distribution. This modification to the regulation will decrease the burden associated with submitting an HDE application for some devices by eliminating the time and cost associated with obtaining a report by a CPA or an attestation by a responsible individual in the organization.

Sections 814.106, 814.108, 814.112, and 814.114 have been amended or revised to comply with a new provision of section 520(m) of the act. This new provision states that FDA will issue an order approving or denying an application 75 days after receiving it. Accordingly, FDA has adjusted its extension, review, and response timeframes for applications, amendments, and supplements.

Section 814.116 has also been amended to implement this new provision of section 520(m) of the act. This amendment adjusts the applicable timeframes in cases where panel review is necessary or an applicant has received a not approvable letter.

Section 814.120 has been revised because the 18-month term and 5-year sunset provision were repealed by FDAMA. In accordance with new section 520(m)(6) of the act, § 814.120 has been revised to provide for the

temporary suspension of approval of an HDE or an HDE supplement only after the sponsor has had an opportunity for an informal hearing under 21 CFR part 16.

Section 814.124 has been amended in accordance with section 520(m)(4) of the act, to allow physicians, faced with an emergency situation, to administer a HUD prior to obtaining IRB approval if the physician determines that the wait will cause the patient serious harm or death. The amendment to this section also reflects the requirement that physicians who use a HUD in such emergencies must notify the IRB of such use and establishes a 5-day timeframe for such notification.

Section 814.126 has been amended to incorporate section 520(m)(5) of the act, which provides FDA the authority to require an HDE applicant to demonstrate continued compliance with the HDE requirements, if the agency believes that such a demonstration is necessary to protect the public health or has reason to believe that the criteria for the HDE exemption are no longer met. FDA believes that it cannot fulfill its statutory obligation to protect the public health unless it obtains certain information about these products from the HDE holder. Accordingly, FDA added a reporting requirement that will permit the agency to monitor the HDE holder's continued compliance with the statutory criteria for exemption. The information required in these reports is the same type of information that is required for premarket approval applications (PMA's), but it will also contain additional information because of the unique nature of these device approvals. If these reports or any other information in FDA's possession give the agency reason to believe that a particular device raises public health concerns or that the criteria for exemption are no longer met, FDA may require the HDE holder to submit additional information to demonstrate compliance with the HDE requirements.

III. Summary and Analysis of Comments and FDA's Responses

FDA received significant adverse comment in response to the direct final rule. A summary of the comments and FDA's responses to them are as follows:

1. One comment expressed concern regarding the emergency use of a HUD before IRB review and approval (§ 814.124(a)), without any additional provision for the protection of human subjects. The comment stated that without additional measures, there may be nothing to prevent mistreatment of vulnerable or mentally incompetent subjects. The comment urged the agency to provide protection for patients in the form of required consultation with an institutional ethicist, ombudsman, or other unbiased third party prior to use of the device without IRB approval.

FDA has not changed this provision of the rule. FDAMA specifically provided for the use of a HUD without IRB approval in emergency situations to protect the life or physical well-being of patients. Although FDA encourages the kind of consultation suggested by the comment in situations where time and circumstances permit such consultation, the agency believes imposing a requirement for such prior consultation would be contrary to the intent of this statutory provision. The agency further believes that notification of the IRB chairperson following the emergency use will provide a measure of protection for patients.

2. The same comment also asked for clarification of the statement in § 814.118(e) that FDA will not withdraw approval of an HDE solely because it is subsequently determined that the disease or condition for which the HUD is intended affects or is manifested in more than 4,000 people in the United States per year. The comment urged FDA to set a distribution limit in order to reduce the possibility that manufacturers will abuse the exemption.

FDA agrees that § 814.118(e) of the proposed rule requires clarification. As originally issued in June 1996, that section of the regulation included an additional sentence, which explained that a determination that more than 4,000 people were affected could be a basis for disapproving an extension request for an HDE. When the sentence referencing the extension was eliminated in the proposed rule to conform with FDAMA's removal of the 18-month term for HDE's, the remaining portion of the provision became unclear. Under the statute and FDA's implementing regulations, an HDE may be withdrawn if any of the criteria for the exemption are no longer met. FDA, therefore, is deleting § 814.118(e) from the final rule.

However, because humanitarian use devices are intended for patient populations with limited options, the statute gives the agency discretion in determining whether a HUD should be removed from the market. FDA does agree with the comment that withdrawal would be appropriate when the numbers of devices being sold are so large that they indicate a clear abuse of the law. The agency does not believe, however, that it would be appropriate in every instance to withdraw approval of an HDE solely because the disease or condition has been determined to affect more than 4,000 people in the United States per year. In determining if the approval for an HDE should be withdrawn, FDA will consider all of the statutory criteria as well as the needs of the affected patient population.

3. The second comment objected to the annual reporting requirement and suggested that FDA determine the appropriate reporting period at the time of product approval rather than always requiring reporting on an annual basis.

FDA has modified the rule in response to this comment. Under the June 26, 1996, final rule, an HDE holder was required to obtain approval of an extension request every 18 months in order to continue marketing the HUD. FDAMA eliminated this requirement but provided that FDA may require the holder to demonstrate continued compliance with the HDE requirements if the agency believes that such demonstration is needed to protect the public health or has reason to believe that the criteria for the exemption are no longer met.

FDA included a provision for annual reporting in the proposed rule because the agency believed that annual reporting would be the most appropriate mechanism for the agency to monitor whether there is reason to question the continued exemption of the device from the act's effectiveness requirements. Upon reconsideration, FDA has determined that the reporting frequency necessary to protect the public health may vary depending upon the device, its intended use, the affected patient population, and experience with the device after it is marketed. Therefore, § 812.126(b)(1) has been modified in the final rule to state that the frequency of the reports will be specified in the approval order for the HDE. Ordinarily, FDA does not expect to require periodic reports to be submitted more frequently than annually. FDA does believe, however, that it may be appropriate to require reports on certain HDE's less frequently and that in many cases the frequency of required reports will decrease after the device has been marketed for a period of time.

4. The same comment also objected to the ''requirement'' that an ''HDE holder maintain records in perpetuity * * *'' and suggested that a more appropriate timeframe would be 3 calendar years after the manufacturer ceases distribution of the product in question.

Section 814.126(b)(2) of the HDE regulation specifies the types of records that should be maintained by the HDE holder, but does not specify the timeframe for maintaining such records. FDA agrees that a reasonable timeframe

should be established for maintaining such records and intends to specify such timeframes as part of the approval order. Accordingly, FDA has modified the regulation to state that records shall be maintained in accordance with the approval order for the HDE.

FDA has also made some changes in the final rule to correct typographical errors and citations that were incorrect.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies applicable statutory requirements imposed by FDAMA. Because the rule allows physicians more flexibility without compromising the public health and reduces the requirements imposed on sponsors, it may permit more small competitors to enter the marketplace. The agency certifies, therefore, that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of the requirements is given below. The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. The description below reflects the changes made in the final rule in response to comments, as discussed in section III of this document.

Title: Amendments to Humanitarian Use Device Requirements.

Description: Section 520(m) of the act was created as an incentive for the development of HUD'S for use in the treatment or diagnosis of diseases or conditions affecting fewer than 4,000 individuals in the United States. FDA is issuing this rule to amend the existing regulations governing HUD's, found in part 814, to conform to the amendments made by FDAMA to section 520(m) of the act.

Section 814.124(a) is amended to allow physicians in emergency situations to administer a HUD prior to obtaining IRB approval. In such situations, the physician is required to provide written notification, including the identification of the patient involved, the date of use, and the reason for use, to the IRB within 5 days after emergency use. FDA anticipates that five physicians will use HUD's in emergency situations before obtaining approval from an IRB. FDA estimates that notifications under this section will take an average of 1 hour per response.

In response to a comment, FDA is amending proposed § 814.126(b)(1) to delete the requirement of an annual report and to include instead a periodic reporting requirement that will be established by the approval order for the HDE. This change continues to permit the agency to obtain sufficient information for it to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements. FDA estimates that, due to the nature of some of the devices, initially 15 HDE holders per year will be required to submit annual reports. As the agency and industry gain experience with HDE's, FDA believes the number of HDE holders who will be required to submit annual reports will decrease. FDA believes that much of the information will already be in the HDE holder's possession, and the agency estimates that the reports will take an average of 120 hours per response.

In addition to the changes required by FDAMA, FDA is amending § 814.104(b)(5) to allow a sponsor who is charging more than $250 per HUD to submit, in lieu of a report by an independent CPA, an attestation by a responsible individual of the organization, verifying that the amount charged does not exceed the device's cost of research, development, fabrication, and distribution. In addition, the amendments to § 814.104(b)(5) waive the requirement for submission of any CPA report or attestation for HUD's for which an HDE applicant is charging $250 or less. FDA anticipates, based on past experience, that 7 of the anticipated 15 HDE holders per year will charge less than $250 per HUD, and thus be exempt from the requirement altogether. For the remaining eight HDE holders, FDA anticipates that all will submit attestations in lieu of CPA reports, and estimates that these submissions will require 2 hours to complete.

Proposed § 814.126(b)(2) has been modified, in response to a comment, to require HDE holders to retain records for a time period specified in the approval order, rather than an unlimited time period.

Description of Respondents: Business or other for profit organization.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.104(b)(5)	8	1	8	2	16

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.124(a)	5	1	5	1	5
814.126(b)(1)	15	1	15	120	1,800
Total					1,821

[1] There are no operating and maintenance costs or capital costs associated with this information collection.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30

[1] There are no operating and maintenance costs or capital costs associated with this information collection.

The information collection provisions of this final rule have been submitted to OMB for review and approved under OMB control number 0910–dd84. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c-360j, 371, 372, 373, 374, 375, 379, 379e, 381.

2. Section 814.100 is amended by revising paragraphs (a)(2) and (d) and by adding paragraph (e) to read as follows:

§ 814.100 Purpose and scope.

(a) * * *

(2) Marketing approval for the HUD notwithstanding the absence of reasonable assurance of effectiveness that would otherwise be required under sections 514 and 515 of the act.

* * * * *

(d) A person granted an exemption under section 520(m) of the act shall submit periodic reports as described in § 814.126(b).

(e) FDA may suspend or withdraw approval of an HDE after providing notice and an opportunity for an informal hearing.

3. Section 814.104 is amended by removing paragraph (b), by redesignating paragraphs (c) through (e) as paragraphs (b) through (d), and by revising newly redesignated paragraphs (b)(5) and (d) and the first sentence in redesignated paragraph (c) to read as follows:

§ 814.104 Original applications.

* * * * *

(b) * * *

(5) The amount to be charged for the device and, if the amount is more than $250, a report by an independent certified public accountant, made in accordance with the Statement on Standards for Attestation established by the American Institute of Certified Public Accountants, or in lieu of such a report, an attestation by a responsible individual of the organization, verifying that the amount charged does not exceed the costs of the device's research, development, fabrication, and distribution. If the amount charged is $250 or less, the requirement for a report by an independent certified public accountant or an attestation by a responsible individual of the organization is waived.

(c) *Omission of information.* If the applicant believes that certain information required under paragraph (b) of this section is not applicable to the device that is the subject of the HDE, and omits any such information from its HDE, the applicant shall submit a statement that identifies and justifies the omission. * * *

(d) *Address for submissions and correspondence.* Copies of all original HDE's, amendments and supplements, as well as any correspondence relating to an HDE, shall be sent or delivered to the Document Mail Center (HFZ–401), Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

4. Section 814.106 is revised to read as follows:

§ 814.106 HDE amendments and resubmitted HDE's.

An HDE or HDE supplement may be amended or resubmitted upon an applicant's own initiative, or at the request of FDA, for the same reasons and in the same manner as prescribed for PMA's in § 814.37, except that the timeframes set forth in § 814.37(c)(1) and (d) do not apply. If FDA requests an HDE applicant to submit an HDE amendment, and a written response to FDA's request is not received within 75 days of the date of the request, FDA will consider the pending HDE or HDE supplement to be withdrawn voluntarily by the applicant. Furthermore, if the HDE applicant, on its own initiative or at FDA's request, submits a major amendment as described in § 814.37(c)(1), the review period may be extended up to 75 days.

5. Section 814.108 is revised to read as follows:

§ 814.108 Supplemental applications.

After FDA approval of an original HDE, an applicant shall submit supplements in accordance with the requirements for PMA's under § 814.39, except that a request for a new indication for use of a HUD shall comply with requirements set forth in § 814.110. The timeframes for review of, and FDA action on, an HDE supplement are the same as those provided in § 814.114 for an HDE.

6. Section 814.112 is amended by revising paragraph (a) introductory text, paragraph (a)(1), and paragraph (b) to read as follows:

§ 814.112 Filing an HDE.

(a) The filing of an HDE means that FDA has made a threshold determination that the application is sufficiently complete to permit substantive review. Within 30 days from the date an HDE is received by FDA, the agency will notify the applicant whether the application has been filed. FDA may refuse to file an HDE if any of the following applies:

(1) The application is incomplete because it does not on its face contain all the information required under § 814.104(b);

* * * * *

(b) The provisions contained in § 814.42(b), (c), and (d) regarding notification of filing decisions, filing dates, the start of the 75-day review period, and applicant's options in response to FDA refuse to file decisions shall apply to HDE's.

7. Section 814.114 is revised to read as follows:

§ 814.114 Timeframes for reviewing an HDE.

Within 75 days after receipt of an HDE that is accepted for filing and to which the applicant does not submit a major amendment, FDA shall send the applicant an approval order, an approvable letter, a not approvable letter (under § 814.116), or an order denying approval (under § 814.118).

8. Section 814.116 is amended by removing the last sentence in paragraph (a) and by adding two sentences in its place, by revising the last sentence of paragraph (d), and by adding paragraph (e) to read as follows:

§ 814.116 Procedures for review of an HDE.

(a) * * * If the HDE is referred to a panel, the agency shall follow the procedures set forth under § 814.44, with the exception that FDA will complete its review of the HDE and the advisory committee report and recommendations within 75 days from receipt of an HDE that is accepted for filing under § 814.112 or the date of filing as determined under § 814.106, whichever is later. Within the later of these two timeframes, FDA will issue an approval order under paragraph (b) of this section, an approvable letter under paragraph (c) of this section, a not approvable letter under paragraph (d) of this section, or an order denying approval of the application under § 814.118(a).

* * * * *

(d) * * * The applicant may respond to the not approvable letter in the same manner as permitted for not approvable letters for PMA's under § 814.44(f), with the exception that if a major HDE amendment is submitted, the review period may be extended up to 75 days.

(e) FDA will consider an HDE to have been withdrawn voluntarily if:

(1) The applicant fails to respond in writing to a written request for an amendment within 75 days after the date FDA issues such request;

(2) The applicant fails to respond in writing to an approvable or not approvable letter within 75 days after the date FDA issues such letter; or

(3) The applicant submits a written notice to FDA that the HDE has been withdrawn.

9. Section 814.118 is amended by revising paragraph (a)(8) and removing paragraph (e) to read as follows:

§ 814.118 Denial of approval or withdrawal of approval of an HDE.

(a) * * *

(8) The applicant does not permit an authorized FDA employee an opportunity to inspect at a reasonable time and in a reasonable manner the facilities and controls, and to have access to and to copy and verify all records pertinent to the application; or

* * * * *

10. Section 814.120 is revised to read as follows:

§ 814.120 Temporary suspension of approval of an HDE.

An HDE or HDE supplement may be temporarily suspended for the same reasons and in the same manner as prescribed for PMA's in § 814.47.

11. Section 814.124 is amended by adding three sentences at the end of paragraph (a) to read as follows:

§ 814.124 Institutional Review Board requirements.

(a) * * * If, however, a physician in an emergency situation determines that approval from an IRB cannot be obtained in time to prevent serious harm or death to a patient, a HUD may be administered without prior approval by the IRB located at the facility or by a similarly constituted IRB that has agreed to oversee such use. In such an emergency situation, the physician shall, within 5 days after the use of the device, provide written notification to the chairman of the IRB of such use. Such written notification shall include the identification of the patient involved, the date on which the device was used, and the reason for the use.

* * * * *

12. Section 814.126 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b) to read as follows:

§ 814.126 Postapproval requirements and reports.

(a) An HDE approved under this subpart H shall be subject to the postapproval requirements and reports set forth under subpart E of this part, as applicable, with the exception of § 814.82(a)(7). * * *

(b) In addition to the reports identified in paragraph (a) of this section, the holder of an approved HDE shall prepare and submit the following complete, accurate, and timely reports:

(1) *Periodic reports.* An HDE applicant is required to submit reports in accordance with the approval order. Unless FDA specifies otherwise, any periodic report shall include:

(i) An update of the information required under § 814.102(a) in a separately bound volume;

(ii) An update of the information required under § 814.104(b)(2), (b)(3), and (b)(5);

(iii) The number of devices that have been shipped or sold since initial marketing approval under this subpart H and, if the number shipped or sold exceeds 4,000, an explanation and estimate of the number of devices used per patient. If a single device is used on multiple patients, the applicant shall submit an estimate of the number of patients treated or diagnosed using the device together with an explanation of the basis for the estimate;

(iv) Information describing the applicant's clinical experience with the device since the HDE was initially approved. This information shall include safety information that is known or reasonably should be known to the applicant, medical device reports made under part 8dd of this chapter, any data generated from the postmarketing studies, and information (whether published or unpublished) that is known or reasonably expected to be known by the applicant that may affect an evaluation of the safety of the device or that may affect the statement of contraindications, warnings, precautions, and adverse reactions in the device's labeling; and

(v) A summary of any changes made to the device in accordance with supplements submitted under § 814.108. If information provided in the periodic reports, or any other information in the possession of FDA, gives the agency reason to believe that a device raises public health concerns or that the criteria for exemption are no longer met, the agency may require the HDE holder to submit additional information to demonstrate continued compliance with the HDE requirements.

(2) *Other.* An HDE holder shall maintain records of the names and

addresses of the facilities to which the HUD has been shipped, correspondence with reviewing IRB's, as well as any other information requested by a reviewing IRB or FDA. Such records shall be maintained in accordance with the HDE approval order.

Dated: October 28, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29391 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 876, 880, 882, 886, 890, and 892

[Docket No. 98–0015]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is codifying the exemption from premarket notification of all 62 class II (special controls) devices listed as exempt in a January 21, 1998, **Federal Register** notice, subject to the limitations on exemptions. FDA has determined that for these exempted devices, manufacturers' submissions of premarket notifications are unnecessary to provide a reasonable assurance of safety and effectiveness. These devices will remain subject to current good manufacturing practice (CGMP) regulations and other general controls. This rulemaking implements new authorities delegated to FDA under the Food and Drug Administration Modernization Act (FDAMA).

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 21, 1998 (63 FR 3142) (hereinafter referred to as the January 21, 1998, notice), FDA issued a notice stating that 62 class II (special controls) devices were exempt from the requirement of premarket notification, with limitations. This notice was issued in accordance with FDAMA (Pub. L. 105–115), which the President signed into law on November 21, 1997. Section 206 of FDAMA, in part, added a new section 510(m) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(m)). Section 510(m)(1) of the act required FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act (generally referred to as a premarket notification or ''510(k)'') to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provided that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. Interested persons were given until April 20, 1998, to comment on the notice.

Section 510(m)(2) of the act also provides that, 1 day after date of publication of the list under section 510(m)(1) FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device.

An exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation. Indeed, FDA's determination that premarket notification was unnecessary to provide a reasonable assurance of safety and effectiveness for devices listed in this document was based, in part, on the assurance of safety and effectiveness that other regulatory controls, such as current good manufacturing practice requirements, provide. Persons with pending 510(k) submissions for devices that are now exempt from premarket notification, subject to the limitations on exemptions, should withdraw their submissions.

FDA is codifying the exemption from premarket notification of all 62 class II devices listed as exempt in the January 21, 1998, notice, subject to the limitations on exemptions. These devices will remain subject to CGMP requirements and other general controls under the statute as well as any special controls.

The Administrative Procedure Act (the APA) (Pub. L. 79–404) and FDA regulations provide that the agency may issue a regulation without notice and comment procedures when the agency for good cause finds (and incorporates the finding and a brief statement of reasons thereof in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(8), § 10.40(e)(1) (21 CFR 10.40).) The Commissioner of Food and Drugs (the Commissioner) finds for good cause that there is reason to dispense with notice and comment rulemaking to amend the codified language in the Code of Federal Regulations (CFR) to reflect that certain class II devices are exempt.

Notice and comment rulemaking to codify the exemptions for these class II devices would be both impracticable and unnecessary. As previously stated, under the authority provided by section 206 of FDAMA, these exemptions have already taken effect by operation of the statute on January 21, 1998. Accordingly, it is both impracticable and unnecessary to provide notice and comment on a regulation that merely codifies that which has already occurred. Furthermore, interested persons were provided an opportunity to comment when the January 21, 1998, notice published.

II. Effective Date

Section 553(d) of the APA requires that the effective date of a substantive rule shall occur not less than 30 days after the publication or service unless, under section 553(d)(1), the rule grants or recognizes an exemption or relieves a restriction, or unless, under section 553(d)(3), the agency finds good cause to make the effective date less than 30 days and publishes the basis with the rule.

The Commissioner finds that because the exemptions are already in effect, providing a delayed effective date for the regulation conforming the CFR to reflect the exemptions is impracticable and unnecessary. Accordingly, there is good cause, under section 553(d)(3) of the APA and § 10.40(c)(4)(ii), to provide an immediate effective date. Additionally, an immediate effective date is authorized under section 553(d)(1) and § 10.40(c)(4)(i) because the codification of the exemptions recognizes an exemption.

III. Comments

FDA received 8 sets of comments from respondents, both supporting and opposing the exemption of the 62 class II devices.

1. Two comments suggested that FDA remove the following in vitro diagnostic, class II devices from the list of exempted devices: 21 CFR 866.3060 *Blastomyces dermatitidis*, 866.3085 *Brucella spp. serological reagents*, 866.3135 *Coccidioides immitis serological reagents*, 866.3320 *Histoplasma capsulatum serological reagents*, 866.3165 *Crytococcus*

neoformans serological reagents, 866.3220 *Entamoeba histoloytica serological reagents*, 866.3280 *Franciscella tularensis serological reagents*, 866.3350 *Leptospira spp. serological reagents*, and 866.3460 *Rabiesvirus immunofluorescent reagents*. The comments stated that these devices fail to meet the criteria for exemption as described in the regulatory notice as ''Limitations on Exemptions.'' Also, a third comment suggested that two ''in vitro devices * * * intended for the screening of familial and acquired genetic disorders''(21 CFR 866.5210 *Ceruloplasmin immunological test system* and 866.5470 *Hemoglobin immunological test system*) fail to meet criteria for exemption under FDAMA.

Devices that are listed as exempt from 510(k) requirements are subject to the limitations to those exemptions described in the January 21, 1998, notice. The limitations to the exemptions state that for certain uses, in vitro diagnostic devices that are otherwise exempt are still subject to 510(k) requirements. Accordingly, a generic device type may be exempt from 510(k) requirements for some uses, and not exempt from those requirements if it is intended for other uses described in the limitations language. For example, the January 21, 1998, notice states that a generic type of device that is otherwise exempt is not exempt if it is used in screening or diagnosis of familial and acquired genetic disorders, or for measuring analytes that serve as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases.

FDA does not agree that all the marketed uses for the devices addressed by the comments (with the exceptions of rabiesvirus immunofluorescent reagents, the ceruloplasmin immunological test system, and the hemoglobin immunological test system) fall within the limitations to the exemptions language in the January 21, 1998, notice. These devices can be exempt, for example, when they are marketed for the determination of immune status, or for epidemiological uses. If these same devices, however, are used in the diagnosis of a life-threatening disease, they would not be exempt.

FDA agrees, however, that all marketed uses for rabiesvirus immunofluorescent reagents are for the detection of rabies, a life-threatening disease, and that all marketed uses for the ceruloplasmin immunological test system and the hemoglobin immunological test system are for the screening or diagnosis of familial and acquired genetic disorders. Accordingly, all intended uses for these devices would fall within the limitations to exemptions for devices that are for use in screening or diagnosis of familial and acquired genetic disorders, or for measuring analytes that serve as surrogate markers for screening, diagnosis, or monitoring life-threatening diseases.

FDA believes that it erroneously listed the generic device types rabiesvirus immunofluorescent reagents, ceruloplasmin immunological test systems, and hemoglobin immunological test systems as exempt from 510(k) requirements in the January 21, 1998, notice. Therefore, FDA intends to issue a proposal to clarify that none of these devices are exempt from 510(k) requirements. Until such rulemaking is final, however, these devices will be listed, in accordance with the January 21, 1998, notice, as exempt subject to the limitations to the exemptions. Sponsors should be aware, however, that FDA believes that all marketed uses for these devices fall within the limitations to the exemptions, and that sponsors, therefore, should continue to submit 510(k) submissions.

2. One comment requested more information on devices covered by 21 CFR 864.9160 *Blood group substances of nonhuman origin for in vitro diagnostic use*.

FDA believes that devices in this classification traditionally have been used for neutralization studies to assist in identification of antibodies in patients with multiple antibodies. There does not appear to be a high demand for these devices. FDA believes that there are quality control practices and procedures in place that make continued active premarket regulation unnecessary to ensure safety and effectiveness.

3. The Health Care Financing Administration (HCFA) raised concerns about the effect that exemptions may have on HCFA's implementation of the Clinical Laboratory Improvements Amendments. HCFA subsequently commented that they believed that their concerns could be addressed without affecting the exemption process.

FDA intends to continue to meet with the HCFA staff to address these concerns, which relate to inspection procedures in laboratories.

4. One comment questioned the limitations on exemptions stated in the January 21, 1998, notice, particularly the limitations applicable to in vitro diagnostic devices that are noninvasive tests. The comment criticized the use of the words ''noninvasive testing'' as being overly broad.

FDA disagrees with this comment. FDA believes that the limitations are necessary to ensure that devices are not marketed that are significantly different from the devices exempted from premarket notification, particularly in the area of in vitro diagnostic devices where devices are often subject to changes in intended use and conditions of use. Noninvasive testing devices should not be exempt because they almost always involve novel matrices and novel technologies.

5. One comment suggested that the limitations on exemptions are unnecessary, confusing, and difficult to apply, especially to in vitro diagnostic devices. This comment additionally notes ''we question the basis for FDA's broad restrictions in such a specific category of devices.''

FDA does not agree that the language is unnecessary, confusing, or difficult to apply. The limitations language in the January 21, 1998, notice, that applies to class II devices listed therein, modifies the limitations on exemptions currently found in ''.9'' of each device classification regulation part (e.g., 21 CFR 862.9, 864.9, etc.) only in three ways. First, FDA has referenced class II devices to reflect that class II devices may be exempted in accordance with new section 510(m) of the act. Second, the limitations language modifies current limitations language by stating that devices are to be compared to ''any legally marketed device in that generic type of device'' rather than a device on the market ''before May 28, 1976'' or a ''preamendments device to which it has been determined substantially equivalent.'' Third, the limitations language adds specific language relating to in vitro diagnostic devices. The agency cannot predict all possible different intended uses or changes in fundamental scientific technologies that may significantly affect safety and effectiveness; limitations on exemptions are, therefore, in the best interest of the public health because they ensure that devices incorporating such changes will be reviewed for safety and effectiveness by the agency before they go to market. Furthermore, FDA believes that in vitro diagnostic devices are unique because their safety and effectiveness relates primarily to the information generated by these devices rather than the direct interaction between device and patient. FDA has more fully discussed the need for these limitations in the January 21, 1998, notice. In order to efficiently allocate review resources, the agency has developed a risk-based approach toward use of the limitations on exemptions to ensure that high-risk devices remain subject to premarket review. The limitations on exemptions continue to take into account two

critical risk elements: Intended use and novelty of technology.

6. One comment stated that body fat testers meet the criteria for exemption from 510(k) and should therefore be exempt. Another comment stated that film dosimetry systems are quality control devices and should not be regulated as a class II device.

Neither of these devices were listed as exempt in the January 21, 1998, notice. Body fat analyzers have been found to be substantially equivalent to legally marketed devices classified under 21 CFR 870.2770 *Impedance plethysmograph*. Film dosimetry systems are regulated under 21 CFR 892.5050 *Medical charged-particle radiation therapy system*. This document is codifying the exemptions only for devices listed in the January 21, 1998, notice.

Under new section 510(m)(2) of the act, any person now may petition the agency for additional exemptions from the requirements of 510(k) for a class II device type. FDA has provided guidance for submitting a petition for exemption of a class II device and has requested that these comments submit such petitions for these device types.

7. One comment believed the limitations on exemptions required clarification as follows:

With regard to the first limitation (''has an intended use that is different from the intended use of a legally marketed device in that generic type''), we believe that current law is clear that if a device has an intended use different than that expressed in the definition contained in the Code of Federal Regulations (CFR), such device would not be the same as the exempted device. The exemption would simply not apply to that device. However, ''intended use'' can encompass many different concepts that go beyond the general intended use statements that comprised the CFR definitions. There has been some controversy, for instance, over the extent to which indications for use can change intended use. Our position is that any indication for use that has been included in a previous 510(k) order of classification identifies the scope of the intended use for each exempt type of device. Minor variances of indications for use within the intended use of an exempt type of device should have no effect on the status of a 510(k) exemption.

FDA has interpreted paragraph''.9(a)'' of each device classification regulation part (e.g., 21 CFR 862.9, 864.9, etc.) in the limitations on exemptions under the current regulation to mean that any legally marketed device (as defined in 21 CFR 807.92(a)(3)) within a device classification regulation, may serve as a predicate for another manufacturer's device, and the other manufacturer's device may be exempt. FDA believes that any additional indication for use for an exempt classification device type (i.e., an indication not previously cleared) is considered a different intended use and does not meet the limitations on exemptions, and therefore, requires a new premarket notification. FDA agrees that minor variances in indications would not affect the exemption status of the classification. FDA notes that in our guidance entitled ''Deciding When to Submit a 510(k) for a Change to an Existing Device,'' FDA states, in regard to minor variances in indications of closely related populations, ''If the expansion is to a population with similar demographics, diagnosis, prognosis, comorbidity and potential for complications as the original, then a new 510(k) is not ordinarily expected.''

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment or an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy on principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If there is a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule would reduce a regulatory burden by exempting manufacturers of devices subject to the requirements of premarket notification, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance from the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Parts 862, 876, 880, 882, and 890

Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drug, 21 CFR parts 862, 864, 866, 876, 880, 882, 886, 890, and 892 are amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.9 is amended by revising the section heading, by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with

high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For use in assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For use in identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

3. Section 862.1440 is amended by revising paragraph (b) to read as follows:

§ 862.1440 Lactate dehydrogenase test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

4. Section 862.1635 is amended by revising paragraph (b) to read as follows:

§ 862.1635 Total protein test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

5. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 864.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 864.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

7. Section 864.6100 is amended by revising paragraph (b) to read as follows:

§ 864.6100 Bleeding time device.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

8. Section 864.6400 is amended by revising paragraph (b) to read as follows:

§ 864.6400 Hematocrit measuring device.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

9. Section 864.9160 is amended by revising paragraph (b) to read as follows:

§ 864.9160 Blood group substance of nonhuman origin for in vitro diagnostic use.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

10. Section 864.9550 is amended by revising paragraph (b) to read as follows:

§ 864.9550 Lectins and protectins.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

11. Section 864.9575 is amended by revising paragraph (b) to read as follows:

§ 864.9575 Environmental chamber for storage of platelet concentrate.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

12. Section 864.9600 is amended by revising paragraph (b) to read as follows:

§ 864.9600 Potentiating media for in vitro diagnostic use.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

13. Section 864.9700 is amended by revising paragraph (b) to read as follows:

§ 864.9700 Blood storage refrigerator and blood storage freezer.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

14. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

15. Section 866.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

16. Section 866.3060 is amended by revising paragraph (b) to read as follows:

§ 866.3060 Blastomyces dermatitidis serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

17. Section 866.3085 is amended by revising paragraph (b) to read as follows:

§ 866.3085 Brucella spp. serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

18. Section 866.3135 is amended by revising paragraph (b) to read as follows:

§ 866.3135 Coccidioides immitis serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

19. Section 866.3165 is amended by revising paragraph (b) to read as follows:

§ 866.3165 Crytococcus neoformans serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

20. Section 866.3220 is amended by revising paragraph (b) to read as follows:

§ 866.3220 Entamoeba histolytica serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

21. Section 866.3280 is amended by revising paragraph (b) to read as follows:

§ 866.3280 Francisella tularensis serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

22. Section 866.3300 is amended by revising paragraph (b) to read as follows:

§ 866.3300 Haemophilus spp. serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

23. Section 866.3320 is amended by revising paragraph (b) to read as follows:

§ 866.3320 Histoplasma capsulatum serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

24. Section 866.3350 is amended by revising paragraph (b) to read as follows:

§ 866.3350 Leptospira spp. serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

25. Section 866.3415 is amended by revising paragraph (b) to read as follows:

§ 866.3415 Pseudomonas spp. serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

26. Section 866.3550 is amended by revising paragraph (b) to read as follows:

§ 866.3550 Salmonella spp. serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

27. Section 866.3660 is amended by revising paragraph (b) to read as follows:

§ 866.3660 Shigella spp. serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

28. Section 866.3930 is amended by revising paragraph (b) to read as follows:

§ 866.3930 Vibrio cholerae serological reagents.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

29. Section 866.5040 is amended by revising paragraph (b) to read as follows:

§ 866.5040 Albumin immunological test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

30. Section 866.5320 is amended by revising paragraph (b) to read as follows:

§ 866.5320 Properdin factor B immunological test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

31. Section 866.5380 is amended by revising paragraph (b) to read as follows:

§ 866.5380 Free secretory component immunological test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

32. Section 866.5460 is amended by revising paragraph (b) to read as follows:

§ 866.5460 Haptoglobin immunological test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

33. Section 866.5490 is amended by revising paragraph (b) to read as follows:

§ 866.5490 Hemopexin immunological test system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

34. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

35. Section 876.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 876.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganism other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

36. Section 876.1620 is amended by revising paragraph (b) to read as follows:

§ 876.1620 Urodynamics measurement system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

37. Section 876.1800 is amended by revising paragraph (b) to read as follows:

§ 876.1800 Urine flow or volume measuring system.

* * * * *

(b) *Classification*. (1) Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

* * * * *

38. Section 876.2040 is amended by revising paragraph (b)(1) to read as follows:

§ 876.2040 Enuresis alarm.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

39. Section 876.4370 is amended by revising paragraph (b)(1) to read as follows:

§ 876.4370 Gastroenterology-urology evacuator.

* * * * *

(b) *Classification*. (1) Class II (special controls) for the gastroenterology-urology evacuator when other than manually powered. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

* * * * *

40. Section 876.4650 is amended by revising paragraph (b) to read as follows:

§ 876.4650 Water jet renal stone dislodger system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

41. Section 876.4680 is amended by revising paragraph (b) to read as follows:

§ 876.4680 Ureteral stone dislodger.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

42. Section 876.4890 is amended by revising paragraph (b)(1) to read as follows:

§ 876.4890 Urological table and accessories.

* * * * *

(b) *Classification*. (1) Class II (special controls) for the electrically powered urological table and accessories. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

* * * * *

43. Section 876.5250 is amended by revising paragraph (b)(1) to read as follows:

§ 876.5250 Urine collector and accessories.

* * * * *

(b) *Classification*. (1) Class II (special controls) for a urine collector and accessories intended to be connected to an indwelling catheter. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

* * * * *

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

44. The authority citation for 21 CFR 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

45. Section 880.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 880.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

46. Section 880.2200 is amended by revising paragraph (b) to read as follows:

§ 880.2200 Liquid crystal forehead temperature strip.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

47. Section 880.2920 is amended by revising paragraph (b) to read follows:

§ 880.2920 Clinical mercury thermometer.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

48. Section 880.5100 is amended by revising paragraph (b) to read as follows:

§ 880.5100 AC-powered adjustable hospital bed.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

49. Section 880.5140 is amended by revising paragraph (b) to read as follows:

§ 880.5140 Pediatric hospital bed.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

50. Section 880.5475 is amended by revising paragraph (b) to read as follows:

§ 880.5475 Jet lavage.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

51. Section 880.5500 is amended by revising paragraph (b) to read as follows:

§ 880.5500 AC-powered patient lift.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

52. Section 880.5550 is amended by revising paragraph (b) to read as follows:

§ 880.5550 Alternating pressure air flotation mattress.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

53. Section 880.6740 is amended by revising paragraph (b) to read as follows:

§ 880.6740 Vacuum-powered body fluid suction apparatus.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures is subpart E of part 807 of this chapter subject to § 880.9.

54. Section 880.6775 is amended by revising paragraph (b) to read as follows:

§ 880.6775 Powered patient transfer device.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

55. Section 880.6910 is amended by revising paragraph (b) to read as follows:

§ 880.6910 Wheeled stretcher.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

PART 882—NEUROLOGICAL DEVICES

56. The authority citation 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

57. Section 882.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 882.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

58. Section 882.5050 is amended by revising paragraph (b) to read as follows:

§ 882.5050 Biofeedback device.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter when it is a prescription battery powered device that is indicated for relaxation training and muscle reeducation and prescription use, subject to § 882.9.

PART 886—OPHTHALMIC DEVICES

59. The authority citation 21 CFR Part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

60. Section 886.9 is amended by revising the section heading, by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 886.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

61. Section 886.3100 is amended by revising paragraph (b) to read as follows:

§ 886.3100 Ophthalmic tantalum clip.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

62. Section 886.3130 is amended by revising paragraph (b) to read as follows:

§ 886.3130 Ophthalmic conformer.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

63. Section 886.3800 is amended by revising paragraph (b) to read as follows:

§ 886.3800 Scleral shell.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

PART 890—PHYSICAL MEDICINE DEVICES

64.The authority citation 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

65. Section 890.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 890.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

66. Section 890.1925 is amended by revising paragraph (b) to read as follows:

§ 890.1925 Isokinetic testing and evaluation system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

67. Section 890.3500 is amended by revising paragraph (b) to read as follows:

§ 890.3500 External assembled lower limb prosthesis.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

68. Section 890.3710 is amended by revising paragraph (b) to read as follows:

§ 890.3710 Powered communication system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

69. Section 890.3725 is amended by revising paragraph (b) to read as follows:

§ 890.3725 Powered environmental control system.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

70. Section 890.5160 is amended by revising paragraph (b) to read as follows:

§ 890.5160 Air-fluidized bed.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

71. Section 890.5170 is amended by revising paragraph (b) to read as follows:

§ 890.5170 Powered flotation therapy bed.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

72. Section 890.5225 is amended by revising paragraph (b) to read as follows:

§ 890.5225 Powered patient rotation bed.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

73. Section 890.5720 is amended by revising paragraph (b) to read as follows:

§ 890.5720 Water circulating hot or cold pack.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

74. Section 890.5740 is amended by revising paragraph (b) to read as follows:

§ 890.5740 Powered heating pad.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E part 807 of this chapter subject to § 890.9.

PART 892—RADIOLOGY DEVICES

75. The authority citation for 21 CFR part 892 continues to read follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

76. Section 892.9 is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively, and by adding new paragraph (b) to read as follows:

§ 892.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

* * * * *

(b) The exemption from the requirement of premarket notification for a generic type of class II device applies only to those class II devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type, or, in the case of in vitro diagnostic devices, for which a misdiagnosis, as a result of using the device, would not be associated with high morbidity or mortality. A class II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification when:

(1) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(3) The device is an in vitro device that is intended:

(i) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(ii) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(iii) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(iv) For assessing the risk of cardiovascular diseases;

(v) For use in diabetes management;

(vi) For identifying or inferring the identity of a microorganism directly from clinical material;

(vii) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(viii) For noninvasive testing; and

(ix) For near patient testing (point of care).

77. Section 892.1980 is amended by revising paragraph (b) to read as follows:

§ 892.1980 Radiologic table.

* * * * *

(b) *Classification*. Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

Dated: October 22, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29189 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA42

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); State Victims of Crime Compensation Programs; Voice Prostheses

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes CHAMPUS as primary payer to State Victims of Crime Compensation Programs; and voice prostheses as a CHAMPUS benefit.

EFFECTIVE DATES: Amendments to §§ 199.2 and 199.8 are effective

September 13, 1994 and § 199.4(g)(48) is effective October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Connie Kiese, TRICARE Management Activity, Office of Medical Benefits and Reimbursement Systems (303) 676–3578.

SUPPLEMENTARY INFORMATION: On October 20, 1997, DoD published an interim rule with a public comment period; however, no comments were received. Therefore, the interim final rule is being adopted as the final rule.

Under 10 U.S.C. 1079(j)(1), no CHAMPUS benefits shall be available for the payment for any service or supply for persons enrolled in any other insurance, medical service, or health plan to the extent that the service or supply is a benefit under the other plan, except in the case of those plans administered under title XIX of the Social Security Act (Medicaid), (51 FR 24008). Therefore, in all double coverage situations, and for all classes of beneficiaries, CHAMPUS shall be secondary payer except when the other medical coverage is provided through Medicaid.

However, on September 13, 1994, Public Law 103–322 was signed into law. Section 230202 of that law states that notwithstanding any other law, if the compensation paid by an eligible crime victim compensation plan would cover costs that a Federal program or a federally financed State or local program would otherwise pay, the crime compensation program shall not pay that compensation; and the other program shall make its payments without regard to the existence of the crime victim compensation program.

This provision mandates, as an exception to 10 U.S.C. 1079(j)(1), that CHAMPUS assume primary payer status to State Victims of Crime Compensation Programs. Benefits will be granted retroactively effective September 13, 1994.

Public Law 103–337, Section 705, October 5, 1994, added voice prostheses to the benefits available under CHAMPUS. Benefits will be granted retroactively effective October 5, 1994.

Regulatory Procedures

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not such a regulation. Nor is this final rule a significant regulatory action under Executive Order 12866. The changes set forth in this final rule are minor revisions to the existing regulation. In addition, this final rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by revising the definition ''State Victims of Crime Compensation Programs'' to read as follows:

§ 199.2 Definitions

* * * * *

(b) * * *

State victims of crime compensation programs. Benefits available to victims of crime under the Violent Crime Control and Law Enforcement Act.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(48) to read as follows:

§ 199.4 Basic program benefits

* * * * *

(g) * * *

(48) *Prosthetic devices.* Prostheses, except artificial limbs, voice prostheses, eyes, or if an item is inserted surgically in the body as an integral part of a surgical procedure. All dental prostheses are excluded, except for those specially required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

* * * * *

4. Section 199.8 is amended by revising paragraphs (b)(3)(iii), (b) (3)(iv) and (b)(3)(v) to read as follows:

§ 199.8 Double coverage.

* * * * *

(b) * * *

(3) * * *

(iii) Entitlement to receive care from Uniformed Services medical care facilities;

(iv) Certain Federal Government programs, as prescribed by the Director, OCHAMPUS, that are designed to provide benefits to a distinct beneficiary population and for which entitlement does not derive from either premium payment of monetary contribution (for example, the Indian Health Service); or

(v) State Victims of Crime Compensation Programs.

* * * * *

Dated: October 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–28414 Filed 11–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–093]

RIN 2115–AE46

Special Local Regulations for Marine Events; Blackbeard's Bounty Festival Pirate Attack, Bogue Sound, Morehead City, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Blackbeard's Bounty Festival Pirate Attack to be held in the waters of Bogue Sound, between the Morehead City waterfront and Sugar Loaf Island, North Carolina. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators, event participants, and transiting vessels.

EFFECTIVE DATE: This regulation is effective from 1:30 p.m. to 6 p.m. on November 7, 1998.

FOR FURTHER INFORMATION CONTACT: Petty Officer Matheny, Marine Events Coordinator, Commander, Coast Guard Group Fort Macon, P.O. Box 237, Atlantic Beach, North Carolina 28512–0237, telephone number (252) 247–4570.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not received until October 9, 1998. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the participants in this event.

Background and Purpose

On November 7, 1998, the Morehead City Downtown Revitalization Committee will sponsor the Blackbeard's Bounty Festival Pirate Attack in the waters of Bogue Sound, between the Morehead City waterfront and Sugar Loaf Island. The event will consist of a mock pirate attack, with simulated cannon fire and pyrotechnic displays. These temporary special local regulations are necessary to provide for the safety of life and property on navigable waters during the event.

Discussion of Regulations

The Coast Guard will establish temporary special local regulations on specified waters of Bogue Sound, between the Morehead City waterfront and Sugar Loaf Island. The temporary special local regulations will be in effect from 1:30 p.m. to 6 p.m. on November 7, 1998. Except for participants in the Blackbeard's Bounty Festival Pirate Attack and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Since the regulations will only be in effect for a short period, the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35–T05–093 is added to read as follows:

§ 100.35–T05–093 Bogue Sound Morehead City, North Carolina.

(a) *Definitions:*

(1) *Regulated area:* The waters of Bogue Sound between the Morehead City waterfront and Sugar Loaf Island from shoreline to shoreline, bounded on the west by a line drawn along longitude 76°43′00″ West and bounded on the east by a line drawn along longitude 76°42′30″ West. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special Local Regulations:*

(1) Except for participants in the Blackbeard's Bounty Festival Pirate Attack and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates:* This temporary final rule is effective from 1:30 p.m. to 6 p.m. on November 7, 1998.

Dated: October 21, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–29413 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR, Part 201

[Docket No. 98–11]

Designation of Agent to Receive Notification of Claimed Infringement

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations governing the designation by online service providers of agents to receive notifications of claimed infringement. The regulations are issued on an interim basis without opportunity for comment due to the necessity of having regulations in place immediately upon enactment of the Online Copyright Infringement Liability Limitation Act. These regulations will be replaced by more complete regulations to be promulgated following notice and opportunity for comment.

EFFECTIVE DATE: The interim regulations are effective November 3, 1998.

ADDRESSES: An original and fifteen copies of the comments shall be delivered to: Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC, or mailed to: David Carson, General Counsel, Copyright GC/I&R, P.O. Box

70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act, Pub. L. 105–_____ (1998). Title II of the Act (subtitled the ''Online Copyright Infringement Liability Limitation Act'') amended chapter 5 of the copyright law, title 17 United States Code, to provide limitations for service provider liability relating to material online. Specifically, new subsection 512(c) provides limitations on service provider liability with respect to material residing, at the direction of a user, on a system or network that the service provider controls or operates, if the conditions set forth in subsection 512(c)(1) are satisfied.

The limitations on liability established in subsection 512(c) apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement by providing contact information for that agent (1) to the Copyright Office and (2) through the service provider's publicly accessible website. 17 U.S.C. 512(c)(2). The required information includes: (A) The name, address, telephone number, and electronic mail address of the agent; and (B) other contact information that the Register of Copyrights deems appropriate. Id. The Register of Copyrights shall maintain a current directory of designated agents, and make the listing available to the public for inspection, and may require payment of a fee by service providers to cover the costs of maintaining the directory. Id.

Because the Online Copyright Infringement Liability Limitation Act was effective on its date of enactment, and because online service providers may wish immediately to designate agents to receive notification of claimed infringement in order to meet the requirements of section 512(c)(2), the Copyright Office herein establishes interim regulations governing the designation of agents to receive notification of claimed infringement. The Office finds, for good cause, that notice and public procedure for issuance of these interim regulations would be impracticable, because of the necessity of having a procedure for designation of agents in place immediately upon the enactment of the Online Copyright Infringement Liability Limitation Act. These interim regulations will be effective immediately, but the Office will publish a notice of proposed rulemaking within the next several weeks seeking comments on more comprehensive final regulations governing the designation of agents to receive notification of claimed infringement. Interim designations filed pursuant to these interim regulations will be valid until the effective date of the final regulations. At that time, service providers wishing to invoke section 512(c)(2) will have to file new designations that satisfy the requirements of the final regulations, which will include the payment of the fee required under the final regulations.

Under section 512(c)(2), a service provider designates an agent by providing information required by Copyright Office regulations both on its publicly available website and in a filing with the Copyright Office. The requirements for such designation during the interim period prior to issuance of final regulations are governed by the rules set forth in the new interim regulations set forth in 37 CFR 201.38. During the interim period the Office will not provide printed forms for filing such interim designations. In order to satisfy section 512(c)(2), online service providers must file a document entitled ''Interim Designation of Agent to Receive Notifications of Claimed Infringement'' which contains all the information required by section 512(c)(2). Section 512(c)(2) provides that the Office may require payment of a fee by service providers to cover the costs of maintaining a directory of agents. The Office concludes that during the interim period, the appropriate fee for the filing of an interim designation is $20.00, the fee currently charged for recordation of a document. *See* 17 U.S.C. 708(a)(4). The fee that will be charged for filing a Designation of Agent to Receive Notifications of Claimed Infringement under the final regulations most likely will be higher.

During the interim period before final regulations are promulgated, each Interim Declaration may be filed only on behalf of a single service provider. For purposes of these interim regulations, related companies (e.g., parents and subsidiaries) are considered separate service providers who would file separate Interim Designations. When it considers final regulations, the Office will solicit comments as to whether related companies (e.g., parent and subsidiary companies) should be permitted to file a single Designation of Agent to Receive Notifications of Claimed Infringement.

List of Subjects in 37 CFR Part 201

Copyright.

Interim Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended to read as follows:

PART 201—GENERAL PROVISIONS

1. The authority for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.38 is added to read as follows:

§ 201.38 Designation of agent to receive notification of claimed infringement.

(a) *General.* This section prescribes interim rules under which service providers may provide the Copyright Office with designations of agents to receive notification of claimed infringement under section 512(c)(2) of title 17 of the United States Code, as amended. These interim rules shall remain in effect until more comprehensive rules have been promulgated following a notice of proposed rulemaking and receipt of public comments.

(b) *Forms.* The Copyright Office does not provide printed forms for filing an Interim Designation of Agent to Receive Notification of Claimed Infringement.

(c) *Content.* An ''Interim Designation of Agent to Receive Notification of Claimed Infringement'' shall be identified as such by prominent caption or heading, and shall include the following information with respect to a single service provider:

(1) The full legal name and address of the service provider;

(2) All names under which the service provider is doing business;

(3) The name of the agent designated to receive notification of claimed infringement;

(4) The full address, including a specific number and street name or rural route, of the agent designated to receive notification of claimed infringement. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location;

(5) The telephone number, facsimile number, and electronic mail address of the agent designated to receive notification of claimed infringement.

(d) *Signature.* The Interim Designation of Agent to Receive

Notification of Claimed Infringement shall include the signature of the appropriate officer or representative of the service provider designating the agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(e) *Filing.* A service provider may file the Interim Designation of Agent to Receive Notification of Claimed Infringement with the Public Information Office of the Copyright Office, Room LM–401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC, during normal business hours, 9 am to 5 pm. If mailed, the Interim Designation should be addressed to: Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Each designation shall be accompanied by a filing fee of $20.00. Designations and amendments will be posted online on the Copyright Office's website (http://www.loc.gov/copyright).

(f) *Amendments.* In the event of a change in the information reported in an Interim Designation of Agent to Receive Notification of Claimed Infringement, a service provider shall file with the Public Information Office of the Copyright Office an amended Interim Designation of Agent to Receive Notification of Claimed Infringement, containing the current information required by section 201.38(c). The amended Interim Designation shall be signed in accordance with the requirements of section 201.38(d) and shall be accompanied by a fee of $20.00.

(g) *Termination and dissolution.* If a service provider terminates its operations, the entity shall notify the Copyright Office by certified or registered mail.

Dated: October 28, 1998.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–29382 Filed 11–2–98; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98–10]

Corrections and Amplifications of Copyright Registrations; Applications for Supplementary Registration

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim Rule; correction.

SUMMARY: Subsection 408(d) of the Copyright Act authorizes the Register of Copyrights to accept applications for supplementary registration to correct errors or amplify information in basic registrations. The Copyright Office of the Library of Congress is now changing the regulatory language to clarify the type of amplification that may be made to a basic registration through supplementary registration.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Renee Coe, Attorney Advisor, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

Subsection 408(d) of the Copyright Act authorizes the Register of Copyrights to accept applications for supplementary registration. The purpose of supplementary registration is to correct errors or amplify information in a basic registration. The regulations for supplementary registration are contained in 37 CFR 201.5, which took effect on January 1, 1978, to implement the 1976 revision of the Copyright Act. Since that time, only minor technical amendments have been made to § 201.5.

The Copyright Office is now revising portions of § 201.5(b) to convey more clearly the Copyright Office's practices and procedures regarding the kind of amplifications that may be made to a basic registration through supplementary registration. The purpose of this notice is to remove any ambiguity concerning paragraph (b) that might exist by clarifying what has been standard practice for many years.

The Copyright Office determined that paragraph (b) should be clarified after it recently became aware that a member of the public misinterpreted the kind of amplification that may be made to a basic application through supplementary registration. Under this misinterpretation, paragraph (b) would prevent an amplification to add the name of someone who is a co-claimant or co-owner of a copyright but who is not also a co-author. The Copyright Office recognizes that paragraph (b) may be susceptible of such a misinterpretation. This amendment will preclude such an interpretation by clarifying that supplementary registration may be used to add the name of a co-owner or co-claimant who is not a co-author but whose name should have been provided at the time the basic registration was made.

This clarification is made by limiting amplifications to the information that is required by the application for the basic registration. See § 201.5(b)(2)(ii)(A). Defined this way, it is clear that supplementary registration may be made to add information about claimants, whether or not they are also authors, if such information constitutes a correct statement of the facts that existed at the time of the original submission of the claim already on record. The information that is required in an application for a basic registration is set forth at 17 U.S.C. 409. The Copyright Office follows the general policy of requiring all authors and copyright claimants to supply information, consistent with 17 U.S.C. 409, concerning the authorship being claimed in the application for registration.

As revised, § 201.5(b)(2)(ii)(A) now expressly states that a supplementary registration may be made to provide information ''such as the identity of a co-author or co-claimant.'' This amendment also clarifies that an amplification may not be made through supplementary registration to add information about an owner or claimant who acquired a copyright claim on or after the effective date of registration. See § 201.5(b)(2)(iii)(A).

These changes clarify what have been the Copyright Office's longstanding practices and procedures. There will be no change in Copyright Office procedures as a result of this amendment.

List of Subjects in 37 CFR Part 201

Copyright, Registration.

Interim Rule

For the reasons stated above, 37 CFR 201.5 is amended as set forth below:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.5 [Amended]

2. Amend § 201.5 to revise paragraphs (b)(2)(ii) and (b)(2)(iii)(A) to read as follows:

* * * * *

(b) * * *

(2) * * *

(ii) An amplification is appropriate:

(A) To supplement or clarify the information that was required by the application for the basic registration and should have been provided, such as the identity of a co-author or co-claimant, but was omitted at the time the basic registration was made, or

(B) To reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that have occurred since the basic registration was made.

(iii) * * *

(A) an amplification, to reflect a change in ownership that occurred on or after the effective date of the basic registration or to reflect the division, allocation, licensing or transfer of rights in a work; or

* * * * *

Dated: October 25, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 98–29383 Filed 11–2–98; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7700]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Alabama: Valley, city of, Chambers County	010424	September 15, 1998.	
Kentucky: Irvington, city of, Breckinridge County	210380	.....do.	
Tennessee: Bedford County, unincorporated areas	470006	.....do.	
Georgia: Sugar Hill, city of, Gwinnett County	130474	September 30, 1998..	

State/location	Community No.	Effective date of eligibility	Current effective map date
Indiana: Parke County, unincorporated areas	180192	.....do	April 14, 1978.
Kansas: Hoxie, city of, Sheridan County	200508	.....do	June 18, 1976.
New Eligibles—Regular Program			
Wisconsin: Ootsburg, village of Sheboygan County	550427	August 31, 1998	June 4, 1976.
Texas: Webb County, unincorporated areas	481059	September 8, 1998	May 17, 1982.
California: Canyon Lake, city of, Riverside County [1]	060753	September 15, 1998	November 20, 1996.
Texas: Rio Bravo, city of, Webb County [2]	481684	.....do	May 17, 1982.
Reinstatements			
Pennsylvania: West Sadsbury, township of, Chester County.	422281	March 23, 1976, Emerg; August 5, 1985, Reg; November 20, 1996, Susp; September 10, 1998, Rein.	November 20, 1996.
Indiana: Alton, town of, Crawford County	180031	March 19, 1984, Emerg; March 19, 1984, Reg; August 4, 1995, Susp; September 30, 1998, Rein.	August 1, 1983.
Wisconsin: Oconto County, unincorporated areas	550294	May 21, 1973, Emerg; January 6, 1983, Reg; August 3, 1998, Susp; September 30, 1998, Rein.	August 3, 1998
Regular Program Conversions			
Region II			
New York:			
Camden, town of, Oneida County	360523	September 7, 1998, Suspension Withdrawn	September 7, 1998.
Endicott, village of, Broome County	360045	.....do	Do.
Trenton, town of, Oneida County	360556	.....do	Do.
Region V			
Michigan: Logan, township of, Mason County	260811	.....do	Do.
Region VIII			
Montana:			
Hamilton, city of, Ravalli County	300186	.....do	Do.
Ravalli County, unincorporated areas	300061	.....do	Do.
Utah: Sevier County, unincorporated areas	490121	.....do	Do.
Region II			
New York: Rome, city of, Oneida County	360542	September 21, 1998, Suspension Withdrawn	September 21, 1998.
Region III			
Pennsylvania: Carroll, township of, Perry County	421949	.....do	Do.
Region IV			
Georgia: Charlton County, unincorporated areas	130292	.....do	Do.
Kentucky: Pike County, unincorporated areas	210298	.....do	Do.
Region V			
Wisconsin:			
Avoca, village of, Iowa County	550173	.....do	Do.
Iowa County, unincorporated areas	550522	.....do	Do.
Manitowoc County, unincorporated areas	550236	.....do	Do.
Region VI			
Arkansas: Lakeview, town of, Phillips County	050169	.....do	Do.
Texas: Newton County, unincorporated areas	480499	.....do	Do.
Region VII			
Kansas: Kansas City, city of, Wyandotte County	200363	.....do	Do.
Nebraska:			
Columbus, city of, Platte County	315272	.....do	Do.
Platte Center, village of, Platte County	310178	.....do	Do.
Platte County, unincorporated areas	310467	.....do	Do.
Region VIII			
Wyoming:			
Cokeville, town of, Lincoln County	560033	.....do	Do.
Lincoln County, unincorporated areas	560032	.....do	Do.
Region X			
Alaska: Emmonak, city of, unorganized borough	020125	.....do	Do.

[1] The City of Canyon Lake has adopted the Riverside County (CID #060245) Flood Insurance Rate Map dated November 20, 1996.
[2] The City of Rio Bravo has adopted the Webb County (CID #481059) Flood Insurance Rate Map dated May 17, 1998, panel 850.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: October 21, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–29415 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–215; RM–9168]

Radio Broadcasting Services; Wilson and Turrell, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 234A from Wilson to Turrell, Arkansas, and modifies the authorization of Pollack Broadcasting Company for Station KAFW(FM) to specify operation on Channel 234A at Turrell, Arkansas, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 62 FR 54819, October 22, 1997. The reallotment of Channel 234A to Turrell will provide that community with its first local aural transmission service. Coordinates used for Channel 234A at Turrell are 35–22–36 NL and 90–15–12 WL. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–215, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Wilson, Channel 234A and adding Turrell, Channel 234A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29322 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–253; RM–9198]

Radio Broadcasting Services; Daingerfield, Ore City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of OARA, Inc. substitutes Channel 295C3 for Channel 2956A at Daingerfield; reallots Channel 295C3 from Daingerfield to Ore City, Texas, as the community's first local aural service, and modifies petitioner's license for Station KWSK(FM). Channel 295C3 can be allotted to Ore City, Texas, in compliance with the Commission's minimum distance separation requirements with at a site 13.5 kilometers (8.4 miles) north-west to accommodate petitioner's desired transmitter site. The coordinates for Channel 295C3 at Ore City, Texas, are 32–52–55 North Latitude and 94–49–18 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: Effective December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–253, adopted October 14 , 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 295A at Daingerfield, and adding Channel 295C3 at Ore City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29321 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–95; RM–8787, RM–8838]

Radio Broadcasting Services; Plattsmouth and Papillion, NE, Osceola, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Platte Broadcasting Company, Inc., substitutes Channel 295C3 for Channel 295A at Plattsmouth, NE, and modifies the license of Station KOTD–FM to specify the higher powered channel. The Commission also substitutes Channel 296C2 for Channel 295C2 at Osceola, IA, and modifies the license of Station KJJC to specify the alternate Class C2 channel. See 61 FR 20206, May 6, 1996. The counterproposal of LifeStyle Communications Corporation, licensee of Station KJJC, to allot Channel 295A to Papillion, NE, as the community's first local aural service, substitute Channel 299A for Channel 295A at Plattsmouth, NE, and modify the license of Station KOTD–FM to specify the alternate Class A channel is dismissed. Channel 295C3 can be allotted to Plattsmouth with a site restriction of 18.4 kilometers (11.4 miles) northeast to avoid a short-spacing to Station KTPK, Channel 295C, Topeka, Kansas, and to accommodate Platte Broadcasting's desired transmitter site, at coordinates 41–09–22 North Latitude and 95–47–03

West Longitude. Channel 296C2 can be allotted to Osceola at Station KJJC's presently licensed transmitter site, at coordinates 41–01–34; 93–51–43. With this action, this proceeding is terminated.

DATES: Effective December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–95, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 295C2 and adding Channel 296C2 at Osceola.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 295A and adding Channel 295C3 at Plattsmouth.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29319 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–83; RM–9280]

Radio Broadcasting Services; Questa, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Metro Broadcasters-Texas, Inc., allots Channel 279C1 to Questa, NM, as the community's first local aural service. *See* 63 FR 34622, June 25, 1998. Channel 279C1 can be allotted to Questa in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.8 kilometers (3.6 miles) southeast, at coordinates 36–40–33 North Latitude; 105–32–27 West Longitude, to avoid a short-spacing to both the allotment reference coordinates and the transmitter site specified in the application of Idaho Broadcasting Consortium, Inc. (BPH–971126MD), for Channel 279C2 at Silverton, CO. With this action, this proceeding is terminated.

DATES: Effective December 7, 1998. A filing window for Channel 279C1 at Questa, NM, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–83, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Questa, Channel 279C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29317 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE37

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Virginia Sneezeweed (Helenium virginicum), a Plant From the Shenandoah Valley of Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) determines *Helenium virginicum* (Virginia sneezeweed) to be a threatened species, under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is restricted to seasonally inundated sinkhole ponds and meadows in Augusta and Rockingham counties, Virginia. Five of the 25 known extant populations are on United States Forest Service land; the others are on private land. This perennial plant is threatened by residential development, incompatible agricultural practices, filling and ditching of its wetland habitat and other disruptions of its habitat and the hydrology that maintains it. *Helenium virginicum* is listed as endangered by the State of Virginia. This rule implements Federal protection and recovery provisions afforded by the Act for this species.

DATES: This rule is effective December 3, 1998.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the United States Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Andy Moser, at the above address or by telephone (410/573–4537).

SUPPLEMENTARY INFORMATION:

Background

Helenium virginicum (Virginia sneezeweed) is a perennial plant and a member of the aster family (Asteraceae) known only from Augusta and

Rockingham counties, Virginia. The common name, sneezeweed, is based on the use of the dried leaves of these plants in making snuff, inhaled to cause sneezing that would supposedly rid the body of evil spirits (Niering 1979). *Helenium virginicum* stems grow to a height of 4 to 11 decimeters (1.5 to 3.5 feet) above a rosette of basal leaves. Coarse hairs are visible on the basal and lower stem leaves. The basal leaves may be broad in the middle tapering toward the ends, but otherwise may appear oblong. Stem leaves are lance-shaped, and become progressively smaller from the base to the tip of the stem. The stems are winged, the wings being continuous with the base of the stem leaves. The flower ray petals are yellow, and wedge-shaped with three lobes at the ends. The central disk of the flower is nearly ball-shaped. Flowering occurs from July to October (Virginia Department of Conservation and Recreation 1995).

Helenium virginicum is similar to common sneezeweed (*Helenium autumnale*), but differs in having a sparsely-leaved stem, larger basal leaves, and longer pappus scales (appendages which crown the ovary or fruit). It is also differentiated by leaf shape, stem and leaf hairs, and habitat requirements. Comparison of morphological and ecological characters with plants in common gardens and transplant sites (Knox *et al.* 1995) clearly demonstrated that *H. virginicum* and *H. autumnale* were two distinct species.

S.F. Blake first described *Helenium virginicum* in 1936 from specimens collected near Stuart's Draft, Virginia. The species is a wetland plant found on the shores of shallow, seasonally flooded ponds in Virginia's Shenandoah Valley. From 1985 through 1995, extensive status survey work was conducted for *H. virginicum* in over 100 limestone sinkhole ponds along the western edge of the Blue Ridge Mountains in the Shenandoah Valley of Virginia. A total of 28 separate populations were located during these surveys.

In addition, one *Helenium* population with similarities to *H. virginicum* has been found near Pomona, Missouri. This population was originally described as a hybrid between *H. autumnale* and *H. flexuosum* (Steyermark 1960). However a recent study (Knox *et al.* 1995) shows that this population of *Helenium* shares 12 of 15 morphological characters with *H. virginicum*, but indicates that more genetic and evolutionary study is necessary to clarify the relationship of this population with *H. virginicum*. Should further studies demonstrate that this population is *H. virginicum*, the existence of this single additional population would not significantly change the status of the species or the need to list it. Because this region of Missouri has been extensively surveyed over many years, it is unlikely that any additional *H. virginicum*-like populations occur there (G. Yatskievych, Missouri Dept. of Conservation, pers. comm. 1997).

The ponds supporting *H. virginicum* range in size from less than 0.04 hectare (ha) (0.1 acre (ac)) to 3 ha (8 ac) and are seasonally flooded or semi-permanent bodies of water. These ponds have poorly drained, acidic, silty loam soils, and are typically flooded from January through July.

Helenium virginicum is adapted to survive the water level fluctuations of the seasonal ponds, giving it a competitive advantage in this habitat. From year to year, the number of *H. virginicum* plants at any given site may vary greatly. A high water level one year may leave the ponds flooded, resulting in less shoreline for plants to become established or to survive. However, a high water level also eliminates the invading shrubs and trees that may compete with *H. virginicum* on the pond shores. When the water level is lower, more pond shore is exposed and the surviving plants and the seeds stored in the soil enable the *H. virginicum* populations to rebound (Virginia Department of Conservation and Recreation 1995).

Helenium virginicum disperses seeds in late fall and winter; the seeds germinate in late summer or early fall of the following year if conditions are suitable. Seeds will not germinate in the dark or under a standing column of water. In the first year of growth, the plant exists as a basal rosette with a diffuse root system. Plants seem to grow year-round, even while submerged. Flowering usually does not occur until the plant is more than 1 year old. *Helenium virginicum* forms one aerial stem bearing several flower heads during the first flowering season; in subsequent years it may form several flowering stems in a season. Plants may live for 5 years, flowering in consecutive years (J.S. Knox, Washington and Lee University, pers. comm. 1997).

Of the 28 populations of *Helenium virginicum* identified during the 10-year survey period, 25 are currently extant. The remaining three populations, where no *H. virginicum* have been seen in recent years, may be extirpated. Of the 25 extant populations, 5 are on U.S. Forest Service land and the remaining 20 are on private lands. The most recent status report (Van Alstine 1996) provides an excellent review of the status and trends for the species. The report indicates that the majority of sites on private land are in wetlands and continue to have a range of disturbances and threats including ditching, filling, mowing, and grazing.

Previous Federal Action

Federal government actions on this species began on November 28, 1983, when we published a notice of review in the **Federal Register** (48 FR 53640) covering all native plants being considered for listing as endangered or threatened. We included *Helenium virginicum* in that notice as a category 2 species. We defined category 2 candidates as those taxa for which we had information indicating that listing may be warranted but for which we lacked sufficient information on status and threats to support issuance of proposed listing rules. We subsequently retained it as a category 2 species when we revised the Notice of Review for Native Plants in 1985 (50 FR 39526), and again in 1990 (55 FR 61184).

In 1985, The Nature Conservancy conducted status surveys of *Helenium virginicum* and numerous other rare plant species. Their final report, dated October 20, 1986, recommended threatened status for this plant but indicated that additional ponds should be checked for the presence of this species.

In 1990 and 1991, the Virginia Department of Conservation and Recreation's Division of Natural Heritage (VDCRDNH) conducted further fieldwork, funded in part by us, to locate additional *Helenium virginicum* populations. The VDCRDNH conducted an exhaustive search and discovered seven additional locations of the species, but three of these locations contained very few individuals. Based largely on this new information, we designated *H. virginicum* as a category 1 candidate when we revised the Notice of Review for Plant Taxa in 1993 (58 FR 51144). We defined category 1 candidates as those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, notice of review (61 FR 7596), we ceased using category designations and included *H. virginicum* as a candidate species. Candidate species are those taxa for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

We published a proposed rule to list *H. virginicum* as threatened in the

Federal Register on September 29, 1997 (62 FR 50896).

Summary of Comments and Recommendations

In the September 29, 1997, proposed rule (62 FR 50896) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate State and Federal agencies and representatives, county governments, scientific organizations, and other interested parties and requested comments. We published legal notices soliciting comments in three Virginia newspapers—the *Harrisonburg News-Record* on October 17, 1997, the *Staunton News-Leader* on October 12, 1997, and the *Waynesboro News-Virginian* on October 10, 1997.

Six individuals and organizations submitted comment letters. Two peer reviewers supported the listing and provided additional pertinent information which we incorporated into the final rule. The U.S. Forest Service and the Virginia Department of Agriculture and Consumer Services supported listing, the Virginia Department of Transportation was neutral, and the Pacific Legal Foundation opposed listing. One private landowner commented by telephone, but neither supported nor opposed the listing.

The following summary includes responses to all substantive written and oral comments we received during the comment period.

Issue 1: One commenter stated that we lack authority under the Act pursuant to the Commerce Clause of Article 1, Section 8 of the United States Constitution to regulate this plant species because ''the Fish and Wildlife Service must show that regulation of these plants will address activities that bear a substantial relation to or substantially affect interstate commerce'' and ''based upon the information contained in the Proposed Rule, regulation of the Virginia sneezeweed does not bear a connection to impacts upon interstate commerce.''

Response: A recent decision in the United States Court of Appeals for the District of Columbia Circuit (*National Association of Homebuilders* v. *Babbitt,* 130 F. 3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States* v. *Lopez,* 514 U.S. 549 (1995), that regulation of species limited to one State under the Act is within Congress' commerce clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of this case (118 S. Ct. 2340 1998). Therefore, our application of the Act to *Helenium virginicum,* a plant endemic to only two counties in the Commonwealth of Virginia, is constitutional.

In addition to the reasons supporting the constitutionality of the ESA itself which were discussed in *Homebuilders,* the past, current, and potentially future use of *Helenium virginicum* habitat for agriculture and cattle production, residential development and roads and highways are activities which affect interstate commerce. The specimens in botanical collections around the country directly traveled via the channels or instrumentalities of interstate commerce as well as the scientists and others who have traveled interstate to study or observe the species.

Issue 2: One commenter expressed concern about the uncertainties involved in wetland delineation and the potential effects of listing *Helenium virginicum* on the regulation of private landowners.

Response: Listing of *Helenium virginicum* will not affect the guidelines and methodologies for delineating wetlands. Listing, however, will require Federal regulatory agencies, primarily the Army Corps of Engineers (Corps), to insure that their actions, including the issuance of wetland permits under section 404 of the Clean Water Act, do not jeopardize the continued existence of this species. In some cases, the Corps may require private landowners applying for permits to reduce the scope or extent of their proposed wetland fill projects if the fill would adversely affect the species.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1513) and regulations (50 CFR part 424) we promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helenium virginicum* (Virginia sneezeweed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat modification is the principal threat to *Helenium virginicum*. The species is threatened by residential development, incompatible agricultural practices, filling and ditching of wetland habitats, groundwater withdrawal, and other disruptions of hydrology. Because the survival and maintenance of *H. virginicum* populations depend on seasonal water level fluctuations, either wetland drainage or increases in the time of inundation may cause high levels of mortality. Of the 18 populations visited in 1995, 8 were located in relatively undisturbed wetlands, while the remaining 10 were in wetlands altered by ditching, mowing, grazing or filling (Van Alstine 1996). At least four of the sites where the species has dramatically declined in recent years have modified hydrology (Van Alstine and Ludwig 1991). Three of these sites have been either ditched or filled, thereby shortening or eliminating the wet phase.

Among the most threatened populations of *Helenium virginicum* are those in the area south and southwest of Lyndhurst, Virginia, where land use is increasingly being converted from agricultural to residential. Increased drainage control which accompanies such development will adversely affect many of the sites located on or near agricultural lands over the next 10 years (Van Alstine and Ludwig 1991).

One proposed project, the widening of Route 340 in Augusta County from two to four lanes, could have severe impacts on one of the largest populations of *Helenium virginicum*. However, it may be possible to avoid or reduce impacts by careful routing of the highway, controlling runoff, and maintaining current hydrology.

Cattle grazing and mowing affect many of the sites supporting the species. In general, moderate levels of grazing and mowing appear to be beneficial, since populations at several regularly grazed or mowed sites are among the largest and best established. Nonetheless, there is a potential that frequent, or poorly timed mowing (and perhaps overgrazing) could have a long-term adverse effect on the species by interfering with flowering and seed production (Van Alstine and Ludwig 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Other species in the genus *Helenium* have been shown to contain compounds with antitumor properties. However, there is no information to show that *Helenium virginicum* is in commercial trade for these compounds. Overcollection has not been documented as a problem for the species. Most collections, to date, have been for scientific purposes; scientists have collected specimens from locally large populations which can tolerate these low levels of collection.

Overcollection could become a problem at some of the sites supporting smaller populations of *H. virginicum*.

C. Disease or Predation

We believe disease and predation currently are not factors affecting the continued existence of *Helenium virginicum*. We believe the effects of grazing on the species are mostly positive, because most grazers appear to feed preferentially on competing vegetation while avoiding *H. virginicum*. We do not know the effects of long-term heavy grazing.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Virginia currently lists *Helenium virginicum* as an endangered species. State law prohibits the taking of this species from State or private lands without consent of the landowner but does not protect the species' habitat. Section 404 of the Clean Water Act provides some regulation of the species' wetland habitats. These regulations have not prevented draining and filling of sites supporting the species. Therefore, existing regulations appear to be inadequate to protect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Invasion of an exotic species, purple loosestrife (*Lythrum salicaria*), is a potential threat to *Helenium virginicum*. Purple loosestrife is slowly extending its range throughout freshwater wetland areas in Virginia and may invade *H. virginicum* habitats. Climate changes (either natural or human-caused) are also a potential threat to the species. Several consecutive years of unusually wet or unusually dry weather can dramatically lower population numbers. Based on his long-term demographic study of one *H. virginicum* site, Knox (1997) suggests that *H. virginicum* is naturally at high risk of local extinction as a result of such events. *Helenium virginicum* is not self-fertilizing, and small populations are at risk of extirpation due to limited availability of compatible mates (Messmore and Knox 1997).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Based on this evaluation, our preferred action is to list *Helenium virginicum* as a threatened species. This species is faced with increasing threats from loss and degradation of habitat due to development and related changes in hydrology as well as other activities incompatible with the species' long-term survival. These threats are compounded by the species' restricted range and small number of populations. While not in immediate danger of extinction, *H. virginicum* is likely to become so in the foreseeable future. In accordance with the definitions for endangered and threatened species found in section 3 of the Act, threatened is the most appropriate classification for *H. virginicum*.

Critical Habitat

Section 3 of the Act defines critical habitat as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. We find that designation of critical habitat is not prudent for *Helenium virginicum*. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Twenty of the 25 known extant populations of *Helenium virginicum* are on private land. Most of these populations are located near or adjacent to residential areas or public roads. The remaining five populations, located on Forest Service land, are easily accessed by existing roads. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a proposal for critical habitat, would make this plant vulnerable to incidents of collection and vandalism and, therefore, could contribute to the decline of the species. Although we do not know that collectors currently seek this species, related members of the genus are commercially cultivated and at least one member of the genus, *H. amarum*, has been shown to contain compounds of possible medicinal value. The listing of this species as threatened also publicizes its rarity and, thus, may make this plant more attractive to researchers, collectors, and those wishing to see rare plants. The potential desirability and the accessibility and vulnerability of the species, therefore, could make the plants subject to collection and vandalism if we publicized their precise locations.

In addition, critical habitat designation for *Helenium virginicum* is not prudent due to lack of benefit. Five of the species' 25 known extant populations occur on Federal land in the George Washington and Jefferson National Forest. The Forest Service is aware of the locations of these populations and has protected four of them through designation of the sites as Special Interest Areas (Biological). The Forest Service likely will protect the fifth population, discovered more recently, by designating the site as a Special Interest Area also. The Forest Service has indicated a commitment to assisting in the recovery of this species by protecting these sites. In the unlikely event that the Forest Service would plan an activity that could potentially affect a population, it is highly likely that if the activity would cause adverse modification of critical habitat, it would also cause jeopardy to the species. Therefore, the designation of critical habitat on Federal lands would not provide greater protection for this species or its habitat than that provided by listing.

The remaining 20 of the 25 known extant populations of *Helenium virginicum* are located on private lands. We informed the owners and managers of these private lands of the population locations and of the importance of protecting the species and its habitat. It is highly likely that an activity on private land involving Federal permitting or funding which causes adverse modification of critical habitat would also cause jeopardy to the species. For this reason, the designation of critical habitat on private lands would not provide greater protection for this species or its habitat than that provided by listing. As outlined above, the designation of critical habitat could cause additional threats but likely would provide no additional benefits for the species. Therefore, the Service concludes that designation of critical habitat for *H. virginicum* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed or proposed for listing as endangered or threatened and with respect to those species' designated or proposed critical habitat, if any. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the Federal agency must enter into formal consultation with us. Federal agency actions that may require conference and/or consultation include Forest Service land management activities and Corps permitting of projects such as road construction and filling of wetlands subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*).

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. The protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. In the case of *Helenium virginicum*, we anticipate that few, if any, trade permits would ever be sought or issued since the species is not common in cultivation nor in the wild.

It is our policy published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time we list a species those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. We are not aware of any otherwise lawful activities being conducted or proposed by the public that would affect *Helenium virginicum* and result in a violation of section 9. You should direct questions regarding whether specific activities would constitute a violation of section 9 to the Field Supervisor of our Chesapeake Bay Field Office (see **ADDRESSES** section).

You should direct requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

We have determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

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Virginia Department of Conservation and Recreation. 1995. Natural Resources Fact Sheet—Virginia Sneezeweed (*Helenium virginicum*). VA Dept. of Conservation and Recreation, Richmond, VA. 2pp.

Author: The primary author of this final rule is Andy Moser, Chesapeake Bay Field office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Helenium virginicum	Virginia sneezeweed	U.S.A. (VA)	Asteraceae	T	652	NA	NA
*	*	*	*	*	*	*	

Dated: October 16, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–29303 Filed 11–2–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 102898B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 29, 1998 , until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) established the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI as 359,363 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 358,363 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived. This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29393 Filed 10–29–98; 2:09 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 212
Tuesday, November 3, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99–984–1 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate, from $0.0116 to $0.0133 per kernelweight pound of merchantable walnuts certified, established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1998–99 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 18, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632; or Email: moabdocket__clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings, must be exhausted before parties may file suit in court. Under section 608c(15)(a) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 1998–99 and subsequent marketing years from $0.0116 to $0.0133 per kernelweight pound of certified merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 11, 1998, and unanimously recommended 1998–99 expenditures of $2,620,274 and an assessment rate of $0.0133 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were $2,391,289. The assessment rate of $0.0133 is $0.0017 higher than the rate currently in effect. The quantity of assessable walnuts for 1998–99 is estimated at 198,000,000 kernelweight pounds, which is 9,000,000 kernelweight pounds less than 1997–98. With the anticipated decreases in assessable walnuts and increased budget expenditures, a higher assessment rate is needed to generate sufficient revenue

to administer the program for the 1998–99 marketing year as shown in the following table.

	Assessment income	Proposed budget	Difference
Current Rate—$0.0116	$2,296,800	$2,620,274	−$323,474
Proposed Rate—$0.0133	2,633,400	2,620,274	+$13,126

The following table compares major budget expenditures recommended by the Board for the 1998–99 and 1997–98 marketing years:

Budget expense categories	1998–99	1997–98
General Expenses	$246,643	$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. As mentioned earlier, merchantable certifications for the year are estimated at 198,000,000 kernelweight pounds which should provide $2,663,400 in assessment income. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year (§ 984.69.)

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 1998–99 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 48 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, as a percentage, 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds. Based an average price of $2.10 per kernelweight pound at point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 1998–99 and subsequent marketing years from $0.0116 to $0.0133 per kernelweight pound of merchantable walnuts certified. The Board unanimously recommended 1998–99 expenditures of $2,620,274 and an assessment rate of $0.0133 per kernelweight pound of merchantable walnuts certified. The proposed assessment rate of $0.0133 is $0.0017 higher than the 1997–98 rate. The quantity of assessable walnuts for the 1998–99 marketing year is estimated at 198,000,000 kernelweight pounds. Thus, the $0.0133 rate should provide $2,633,400 in assessment income and be adequate to meet this year's expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year (§ 984.69).

The following table compares major budget expenditures recommended by the Board for the 1998–99 and 1997–98 marketing years:

Budget expense categories	1998–99	1997–98
General Expenses	$246,643	$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The higher assessment rate is needed to provide sufficient revenue to administer the program for the 1998–99 marketing year as shown in the following table.

	Assessment income	Proposed budget	Difference
Current Rate—$0.0116	$2,296,800	$2,620,274	−$323,474
Proposed Rate—$0.0133	2,633,400	2,620,274	+$13,126

The Board reviewed and unanimously recommended 1998–99 expenditures of $2,620,274 which included increases in administrative and office expenses, and production research salary, and a decrease for a research programs. Prior to arriving at this budget, the Board considered information and recommendations from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. After a desired expenditure level was determined, the assessment rate of $0.0133 per kernelweight pound of assessable walnuts was determined by dividing the total recommended budget by the quantity of assessable walnuts, estimated at 198,000,000 kernelweight pounds for the 1998–99 marketing year. This is approximately $13,000 above the anticipated expenses, which the Board determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the grower price for the 1998–99 season could range between $1.45 and $1.58 per kernelweight pound of walnuts. Therefore, the assessment revenue for the 1998–99 marketing year as a percentage of total grower revenue should be less than one percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 11, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 marketing year began on August 1, 1998, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is proposed to be revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 1998, as assessment rate of $0.0133 per kernelweight pound is established for California merchantable walnuts.

Dated: October 21, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–29455 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Specification for Telecommunications Conduit

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction, by adding a new specification, RUS Specification for Telecommunications Conduit. The specification will provide the relevant engineering and technical requirements for conduit.

DATES: Comments concerning this proposed rule must be received by RUS or be postmarked no later than January 4, 1999.

ADDRESSES: Comments should be mailed to Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250–1598. RUS requests an original and three copies of all comments (7 CFR part 1700.4). All comments received will be made available for public inspection at room 2835, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1598 Washington, DC 20250–1598 between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1598, Washington, DC 20250–1598, telephone (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is exempt from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule involves standards and specifications, which may increase the short-term direct costs to the RUS borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this proposed rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0059. Comments concerning these requirements should be directed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, USDA, RUS, Stop 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.582, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) determined that RUS and RTB loans and loan guarantees, were not covered by Executive Order 12372.

Unfunded Mandates

This proposed rule contains no federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this proposed rule is not subject to the Unfunded Mandates Reform Act.

Background

Pursuant to the Rural Electrification Act of 1936, as amended, (7 U.S.C. *et seq.*) (RE Act), RUS makes and guarantees loans to furnish and improve telecommunications in rural areas. As a condition of financing, borrowers are required to follow RUS standards and specifications for the construction of RUS financed facilities.

The specification contains mechanical and environmental requirements, desired design features, and test methods for evaluation of conduit. The test method procedures described in the specification are required to demonstrate the reliability of conduit for use in telecommunications systems.

Conduit is fabricated from rigid and flexible plastic, concrete, or fiberglass. Conduit comes in different sizes and configurations to suit a variety of applications. The purpose of conduit is to provide protection of telecommunications cable and provide ease of installation in restrictive areas.

List of Subjects in 7 CFR Part 1755

Loan programs-telecommunications, Reporting and recordkeeping requirement, Rural areas, Telephone.

For reasons set out in the preamble, RUS proposes to amend Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1755.98 is amended by revising the section heading and by adding the entry 1755.920 to the table in numerical order to read as follows:

§ 1755.98 List of telephone standards and specifications included in this chapter.

* * * * *

Section	Issue date	Title
* * * * * * *		
1755.920	[Effective date of final rule]	RUS Specification for Telecommunications Conduit.

3. Section 1755.920 is added to read as follows:

§ 1755.920 RUS specification for telecommunications conduit.

(a) *Scope.* (1) The purpose of this specification is to inform manufacturers and users of conduit of the engineering and technical requirements that are considered necessary for satisfactory performance in outside plant environments. Included are the relevant mechanical and environmental requirements, desired design features, and test methods for evaluation of conduit.

(2) The various types of conduit materials covered by this specification include rigid plastic, flexible plastic, multi-duct plastic, multi-duct concrete, and fiberglass.

(3) All conduit sold to RUS borrowers for projects involving RUS loan funds under this specification must be

accepted by RUS Technical Standards Committee ''A'' (Telecommunications). For conduit manufactured to this specification, all design changes to an accepted design must be submitted for acceptance. RUS will be the sole authority on what constitutes a design change.

(4) Materials, manufacturing techniques, or conduit designs not specifically addressed by this specification may be allowed if accepted by RUS. Justification for acceptance of modified materials, manufacturing techniques, or conduit designs shall be provided to substantiate product utility and long term stability and endurance.

(5) American Society for Testing and Materials Specifications (ASTM) C 150–97, Standard Specification for Portland Cement; and ASTM F 1173–95, Standard Specification for Thermosetting Resin Fiberglass Pipe and Fittings to be used for Marine Applications, referenced in this section are pending approval of incorporation by reference by the Office of the Federal Register. Copies are available from ASTM, 100 Barr Harbor Drive, W. Conshohocken, Pennsylvania 19428–2959, telephone number (610) 832–9585. Copies of ASTM standards are available for inspection during normal business hours at RUS, room 2843, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(6) National Electrical Manufacturers Association (NEMA) TC–2, Electrical Plastic Tubing (EPT) and Conduit (EPC–40 and EPC–80); NEMA TC–5, Corrugated Polyolefin Coilable Plastic Utilities Duct; NEMA TC–6, PVC and ABS Plastic Utilities Duct for Underground Installation; NEMA TC–7, Smooth-Wall Coilable Polyethylene Electrical Plastic Duct; NEMA TC–8, Extra-Strength PVC Plastic Utilities Duct for Underground Installation; and NEMA TC–10, PVC Plastic Communications Duct and Fittings for Underground Installation, referenced in this section are pending approval of incorporation by reference by the Office of the Federal Register. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood CO 80112, telephone number (303) 792–2181. Copies of NEMA standards are available for inspection during normal business hours at RUS, room 2843, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) *Performance criteria and test procedures for rigid plastic conduit.* (1) Type B, Type C, and Type D round plastic conduit are available in 1 inch (in.) (25 millimeters (mm)), 1½ in. (38 mm), 2 in. (51 mm), 3 in. (76 mm), 3½ in. (89 mm), and 4 in. (102 mm) diameters, and are normally supplied in 20 foot lengths. The three types are as follows:

(i) Type B or Encased Buried (EB) is a thin-wall, round plastic conduit designed to always be encased in concrete;

(ii) Type C or Direct Buried (DB) is a thick wall, round plastic conduit designed to be placed with or without encasement; and

(iii) Type D is a round plastic conduit designed for exposed installation, as on bridges.

(2) Plastic telecommunications duct and fittings shall be made from Polyvinyl-Chloride (PVC) compound or Acrylonitrile-Butadiene-Styrene (ABS) compound. Materials other than PVC or ABS may be used provided that the materials are accepted by RUS prior to their use.

(3) The manufacturer shall specify the sizes of conduit that are to be considered for RUS acceptance (1 in. (25 mm), 1½ in. (38 mm), 2 in. (51 mm), 3 in. (76 mm), 3½ in. (89 mm), and 4 in. (102 mm) diameters).

(4) All plastic telecommunications duct and fittings shall be manufactured and tested in accordance with the specifications listed in Table 1. Test results shall be submitted for all sizes of conduit to be considered for RUS acceptance. Table 1 is as follows:

TABLE 1.—PLASTIC CONDUIT CRITERIA

Type of plastic	Conduit sizes in. (mm)	Performance specification
PVC	1 (25), 1½ (38)	NEMA TC–2 or TC–8.
PVC	2 (51), 3 (76)	NEMA TC–2, TC–6, or TC–8.
PVC	3½ (89), 4 (102)	NEMA TC–2, TC–6, TC–8, or TC–10.
ABS	2 (51), 3 (76), 3½ (89), 4 (102)	NEMA TC–6.

(c) *Performance criteria and test procedures for flexible plastic conduit.* (1) Flexible plastic conduit is available in both smooth wall and corrugated types.

(2) Smoothwall flexible plastic conduit and fittings shall be made from High-Density Polyethylene (HDPE) or Medium-density Polyethylene (MDPE). Corrugated flexible plastic conduit and fittings shall be made from HDPE or Copolymer Polypropylene. Materials other than HDPE, MDPE, or Copolymer Polypropylene may be used provided that the materials are accepted by RUS prior to their use.

(3) The manufacturer shall specify the sizes of conduit that are to be considered for RUS acceptance (1 in. (25 mm), 1½ in. (38 mm), 2 in. (51 mm), 3 in. (76 mm), 3½ in. (89 mm), and 4 in. (102 mm) diameters).

(4) All flexible plastic telecommunications duct and fittings shall be manufactured and tested in accordance with the specifications listed in Table 2. Test results shall be submitted for all sizes of conduit to be considered for RUS acceptance. Table 2 is as follows:

TABLE 2.—FLEXIBLE PLASTIC CONDUIT CRITERIA

Type of flexible conduit	Conduit sizes in. (mm)	Performance specification
Smooth-wall, HDPE and MDPE.	1 (25), 1½ (38), 2 (51), 3 (76), 3½ (89), 4 (102)	NEMA TC–7.
Corrugated, HDPE and Copolymer Polypropylene.	1 (25), 1½ (38), 2 (51), 3 (76), 3½ (89), 4 (102)	NEMA TC–5.

(d) *Performance criteria and test procedures for multi-duct plastic conduit.* (1) Multi-duct plastic conduit usually consists 3, 4, or 6 inner ducts contained within a larger plastic duct.

(2) Multi-duct plastic conduit and fittings shall be made from PVC or HDPE. Materials other than PVC or HDPE may be used provided that the materials are accepted by RUS prior to their use.

(3) The manufacturer shall specify the sizes of conduit and number chambers that are to be considered for RUS acceptance (3, 4, or 6 chambers).

(4) All multi-duct plastic conduit and fittings shall meet the requirements shown in Table 3. Test results showing conformance to these requirements shall be submitted for each size of conduit to be considered for RUS acceptance. Table 3 is as follows:

TABLE 3.—MULTI-DUCT PLASTIC CONDUIT CRITERIA

Material	Performance specification
PVC	NEMA TC–2, TC–6, TC–8, or TC–10.
HDPE	NEMA TC–7.

(e) *Performance criteria and test procedures for multi-duct concrete conduit.* (1) Multi-duct concrete conduit is available in 4, 6, and 9 way configurations with bore sizes of 3½ in. (89 mm) or 4 (102 mm) in. in diameter.

(2) Multi-duct concrete conduit shall consist of a homogeneous mixture of portland cement, aggregates, and water. Portland Cement shall be type I, II, or III conforming to ASTM C150–97, ''Standard Specification for Portland Cement.''

(3) The manufacturer shall specify the sizes of conduit that are to be considered for RUS acceptance (4, 6, or 9 chambers).

(4) *Physical tests.*—(i) *Permeability.* No conduit shall be permeable to water in excess of 38.5 cubic in. (63.1*E+04 cubic mm) per hour as determined in an outside corner chamber of the multi-duct. The test specimens for this test shall be in units of conduit at least 36 in. (914 mm) in nominal length which have been dried at a temperature of approximately 70°F (21°C) for a period of not less than 24 hours. A total of 5 test specimens shall be prepared in this manner. A rubber duct plug or equivalent shall then be used to seal the chamber to be tested. Water at a temperature of approximately 70°F (21°C) shall be poured into the sealed chamber to a height of 34 in. (864 mm) from the sealed end of the chamber. The water level shall not fall more than 2 in. (51 mm) in 30 minutes for each of the tested specimens.

(ii) *Compressive strength.* Compressive strength tests shall be made on a total of 5 specimens of 12 in. (305 mm) in nominal length cut from full length units of conduit but not including any formed end. Specimens shall be air dried at a temperature of approximately 70°F (21°C) for a period of not less than 24 hours immediately prior to the test. Samples shall be tested, 6-duct resting on the wide side, as follows. A suitable container, having interior dimensions of not less than 14 in. (356 mm) in length and 14 in. (356 mm) in width, shall be filled to a depth of not less than 2 in. (51 mm) nor more than 4 in. (102 mm) with dry, tightly packed sand and placed on the lower platen of the testing machine. The test specimen shall be bedded on the sand so that its upper surface is parallel with the crosshead of the test machine. The upper bearing block shall consist of a rigid steel plate 14 in. (356 mm) square and not less than ½ in. (13 mm) thick and shall be positioned so that it overhangs the flat portion of the upper surface of the sample on all sides. A sheet of sponge rubber 1 in. (25 mm) thick and 14 in. (356 mm) square, or equivalent, shall be inserted between the bearing block and the specimen. The load shall then be applied at a uniform rate such that the minimum compressive value set forth in Table 4 is reached in not less than 1 minute. No sample shall fail at a load less than that shown in Table 4. A sample shall be considered to have failed upon the first evidence that cracking has occurred. Table 4 is as follows:

TABLE 4.—MINIMUM BREAKING LOADS

Conduit size	Minimum breaking load (lbs)	
	3½ in. (89 mm) diameter duct	4 in. (102 mm) diameter duct
4–Duct	15,000	11,250
6–Duct	20,000	15,000
9–Duct	20,000	15,000

(f) *Performance criteria and test procedures for epoxy resin fiberglass conduit.* (1) Epoxy Resin Fiberglass conduit is available in 2 in. (51 mm), 3 in. (76 mm), 4 in. (102 mm), and 6 in. (152 mm) bore sizes.

(2) All Epoxy Resin Fiberglass conduit and fittings shall be manufactured and tested in accordance with ASTM F 1173–95, ''Standard Specification for Thermosetting Resin Fiberglass Pipe and Fittings to be used for Marine Applications''. Test results shall be submitted for all sizes of conduit to be considered for RUS acceptance.

(g) *RUS Acceptance Procedure.* (1) The tests described in this specification are required for acceptance of product designs and major modifications of accepted designs. All modifications shall be considered major unless otherwise declared by RUS. These tests are intended to demonstrate the capability of the manufacturer to produce conduit which meets service requirements of RUS Telecommunications borrowers.

(2) For initial acceptance the manufacturer shall:

(i) Certify that the product fully complies with each paragraph of this specification, and submit supporting test data;

(ii) Submit quality assurance data which is representative of several production lots and which demonstrate the reliability of an ongoing quality assurance program;

(iii) Certify whether the product complies with the domestic origin manufacturing provisions of the ''Buy American'' Requirement of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended (the REA ''Buy American'' Provision);

(iv) Submit at least three user testimonials concerning field performance of the product;

(v) Submit product identification information;

(vi) Submit one three inch production sample of each size of conduit to be considered for acceptance;

(vii) Agree to provide plant inspections by RUS; and

(viii) Provide any other nonproprietary data deemed necessary

by the Chief, Outside Plant Branch (Telecommunications).

(3) Requalification of a manufacturer's product shall be required every 2 years after initial acceptance of that product. In order for RUS to consider a manufacturer's request that a product be requalified, the manufacturer shall certify, that the product:

(i) Fully complies with each paragraph of this specification; and

(ii) Does or does not comply with the domestic origin manufacturing provisions of the REA ''Buy American'' provisions. The required certifications shall be dated within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards Committee ''A'' (Telecommunications), Telecommunications Standards Division, Rural Utilities Service, 1400 Independence Ave, SW, STOP 1598, Washington, DC 20250–1598.

Dated: October 23, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–29132 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–14–AD]

Airworthiness Directives; Eurocopter France Model SA. 315B, SA. 316B, SA. 316C, SA. 319B, and SE. 3160 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA. 315B, SA. 316B, SA. 316C, SA. 319B, and SE. 3160 helicopters. This proposal would require inspecting the main rotor blade cuff attachment fitting in the area of the main rotor blade (blade) attachment bolts for cracks, and removing and replacing the blade if a crack is found. This proposal is prompted by a report of a crack in a main rotor blade cuff attachment fitting/spar assembly that was discovered during fatigue testing by the manufacturer. The actions specified by the proposed AD are intended to prevent failure of a main rotor blade cuff attachment fitting at a bolt hole location, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–14–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA. 315B, SA. 316B, SA. 316C, SA. 319B, and SE. 3160 helicopters. The DGAC advises that, within 400 operating hours, and thereafter at every 400 operating hours, a crack detection inspection of the main rotor blade cuff attachment fitting in the area of the main rotor blade attachment bolt holes must be performed. The DGAC issued AD 96–081–036(B)R1, applicable to Eurocopter France Model SA. 315B helicopters, and AD 96–082–54(B)R1 applicable to Eurocopter France Model SA. 316B, SA. 316C, SA. 319B, and SE. 3160 helicopters, both dated April 24, 1996, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA. 315B, SA. 316B, SA. 316C, SA. 319B, and SE. 3160 helicopters of the same type design registered in the United States, the proposed AD would require inspecting the attachment fitting in the area of the blade attachment bolt holes for cracks, and removing and replacing any blade in which a crack is found.

The FAA estimates that 83 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed initial inspection and 2 work hours per helicopter for each repetitive inspection, and that the average labor rate is $60 per work hour. Required parts would cost $40,000 per blade, if needed. Based on these figures, the total cost impact of the proposed AD on U.S. operators is

estimated to be $49,960 for one inspection and one blade replacement for each helicopter per year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97–SW–14–AD.

Applicability: Model SA. 315B, SA. 316B, SA. 316C, SA. 319B, and SE. 3160 helicopters, with a main rotor blade, part number (P/N) 316OS.11.10.000, 316OS.11.30.000, 316OS.11.35.000, 316OS.11.40.000, 316OS.11.45.000, 316OS.11.50.000, or 316OS.11.55.000, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: (1) For blades with less than 400 hours time-in-service (TIS), required prior to the accumulation of 400 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 400 hours TIS; or (2) for blades with 400 hours or more TIS, required within 50 hours TIS or 30 calendar days, whichever occurs first, unless accomplished previously, and thereafter at intervals not to exceed 400 hours TIS:

To prevent failure of a main rotor blade (blade) cuff attachment fitting at a bolt hole location, loss of a blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect both upper and lower blade surfaces of each blade cuff for cracks (see Figure 1) as follows:

(1) Use a mild liquid detergent or equivalent to remove all dirt from the blade cuff.

(2) Inspect the blade cuff for cracks, paying particular attention to the area around the attaching bolts, using a 10-power or higher magnifying glass.

(3) If a crack is suspected, remove any paint and clean the area under inspection using a Naptha-type solvent or equivalent, and conduct a dye penetrant inspection. Completely isolate the area under inspection with self-adhesive aluminum tape to prevent solvent or penetrating dye seepage into the other areas of the blade.

(b) If a crack is detected, remove the blade and replace it with an airworthy blade.

BILLING CODE 4910–13–P

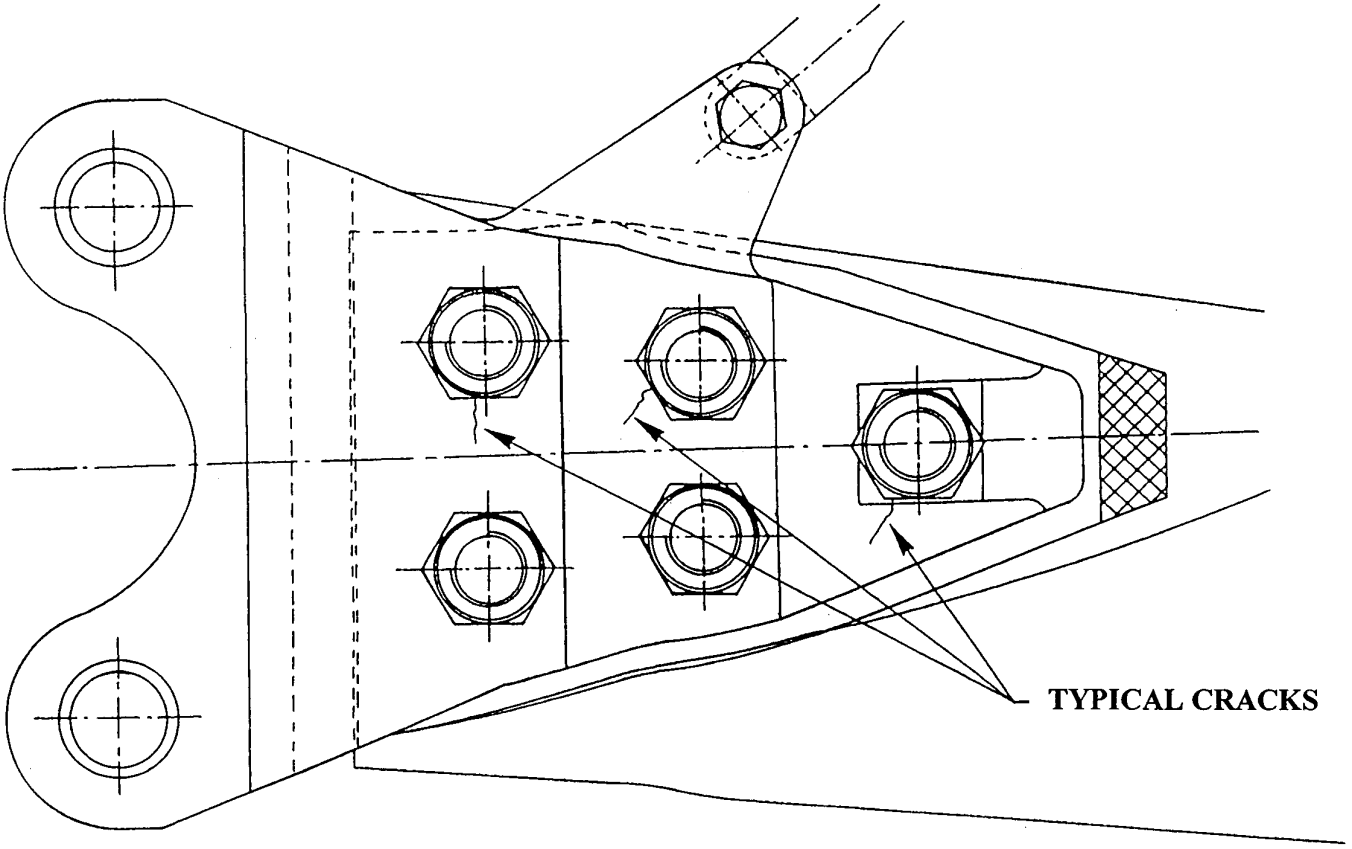

Figure 1

BILLING CODE 4910–13–C

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–081–036(B)R1 and AD 96–082–054(B)R1, both dated April 24, 1996.

Issued in Fort Worth, Texas, on October 27, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–29378 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–39]

Proposed Amendment to Class E Airspace; Wise, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice to amend the Class E airspace area at Wise, VA. The development of three new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) and the Localizer (LOC) at Lonesome Pine Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 3, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–39, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–39.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Wise, VA. A GPS RWY 6 SIAP, GPS RWY 24 SIAP and a LOC RWY 24 SIAP have been developed for Lonesome Pine Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA VA E5 Wise, VA [Revised]

Lonesome Pine Airport, Wise, VA
(Lat. 36°59′15″N., long. 82°31′49″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Lonesome Pine Airport.

* * * * *

Issued in Jamaica, New York, on October 26, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–29410 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–40]

Proposed Removal of Class E Airspace; Romulus, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove Class E airspace at Romulus, NY. Seneca Army Air Field (AAF) has been closed and all instrument procedures to the airport have been cancelled. Therefore, the requirement for Class E airspace no longer exists. Adoption of this proposal would result in the affected area reverting to Class G airspace.

DATES: Comments must be received on or before December 3, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–40, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–40.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove Class E airspace at Seneca AAF, Romulus, NY. The required criteria for Class E airspace are no longer being met. The airport has been closed, negating the need for the airspace. Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E–5 Romulus, NY [Removed]

* * * * *

Issued in Jamaica, New York, on October 26, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–29409 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–41]

Proposed Amendment to Class E Airspace; Milton, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Milton, WV. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Ona Airpark has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 3, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–41, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–41.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Milton, WV. A GPS RWY 07 SIAP has been developed for Ona Airpark. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter what would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Milton, WV [Revised]

Ona Airpark, Milton, WV

(Lat. 38°26′26″N., long. 82°12′05″W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Ona Airpark.

* * * * *

Issued in Jamaica, New York, on October 26, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–29408 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 46

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA); Labor.

ACTION: Notice of public meetings.

SUMMARY: As directed by Congress, MSHA will develop final training regulations by September 30, 1999 to apply at mines where MSHA is currently prohibited by an appropriations amendment from enforcing existing miner training requirements. MSHA has also been instructed to work with interested parties in developing these regulations. To facilitate the broadest possible input from the regulated public, MSHA will hold seven public meetings across the country to receive comments from interested parties on the development of a proposed rule governing miner training.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See *Supplementary Information* section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Carol Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. She can be reached at cjones@msha.gov (Internet E-mail), 703–235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Public Meetings

MSHA will be conducting seven public meetings throughout the country to receive comments from interested parties on the development of a proposed rule governing miner training. All seven meetings are scheduled to run from 8:00 a.m. to 5:00 p.m., but will continue into the evening if necessary to accommodate as many participants as is reasonably possible. We will hold meetings on the following dates at the following locations:

1. December 7, 1998, Hilton Hotel, 2855 N. Milwaukee Avenue, Northbrook Illinois, 60062, Tel. No. (847) 480–7500.

2. December 9, 1998, Embassy Suites Hotel, 4444 N. Havana Street, Denver, Colorado, 80239, Tel. No. (303) 375–0400.

3. December 11, 1998, Albany Marriott, 189 Wolf Road, Albany, New York, 12205, Tel. No. (518) 458–8444.

4. December 15, 1998, Embassy Suites Hotel, 7900 NE 82nd Avenue, Portland, Oregon, 97220, Tel. No. (503) 460–3000.

5. December 17, 1998, Doubletree Hotel, 222 N. Vineyard Avenue, Ontario, California, 91764, Tel. No. (909) 983–0909.

6. January 5, 1999, Hotel Adolphus, 1321 Commerce Street, Dallas, Texas, 75202, Tel. No. (214) 742–8200.

7. January 7, 1999, Georgia International Convention Center, 1902 Sullivan Road, College Park, Georgia, 30337, Tel. No. (770) 997–3566.

We will conduct the meetings in an informal manner, and a court reporter will make a verbatim transcript of the proceedings. All meetings are open to the public. Upon request, we will allow members of the public to speak at the meeting they designate on a first-come, first-served basis. In addition to making an oral statement, any member of the public may also submit written statements, charts, and other data to MSHA representatives at the meeting, which will be included as part of the record when a proposed rule is developed.

Send requests to make oral presentations to MSHA, Office of Standards, Regulations, and Variances; 4015 Wilson Blvd., Room 631; Arlington, Virginia, 22203. Phone or fax requests may be made at voice: 703–235–1910; or fax: 703–235–5551. You also may request to speak as you sign in at the meeting.

II. Background

Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires that each mine operator have a health and safety training program, and that the Secretary of Labor promulgate regulations with respect to such health and safety training programs. In 1978 MSHA published regulations at 30 CFR part 48 that implemented the miner training provisions of § 115 of the Mine Act. In 1979, Congress inserted language in the Department of Labor's appropriations bill for fiscal year 1980 that prohibited the expenditure of appropriated funds to enforce any training requirements at approximately 10,200 surface nonmetal work sites. The restriction currently prohibits the use of appropriated funds to:

> carry out § 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of § 104(g)(1) of such Act relating to the enforcement of any training requirements, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine.

Over the last several years, the number of fatalities at the exempted industries has increased. MSHA's fatal accident investigations have shown that the majority of miners involved in fatal accidents in the industries affected by the rider had not received health and safety training in accordance with the Mine Act's requirements. In 1997, for example, 60 percent of victims of fatal accidents had not received health and safety training in accordance with the Mine Act.

Congress has included language in MSHA's fiscal year 1999 appropriation that directs MSHA to promulgate final training regulations that are appropriate for the industries affected by the rider. MSHA anticipates that a proposed rule would implement the training and retraining requirements contained in § 115 of the Mine Act and ensure that miners receive effective training, while at the same time addressing the particular needs of the identified segments of the mining industry.

Section 115 of the Mine Act provides that each operator of a coal or other mine shall have a health and safety training program that is approved by the Secretary of Labor, and that complies with specified minimum requirements. Section 115(a) specifies that surface miners are to receive no less than 24 hours of new miner training, no less than 8 hours of refresher training annually, and task training for new work assignments. Section 115 also requires that the training cover specific subject areas; provides that training is to be conducted during normal work hours at normal pay; requires that miners be reimbursed for additional costs they incur incident to training; and provides that mine operators must maintain miners' training certificates and furnish such records to the miners.

III. Conduct of Meetings

The purpose of these public meetings is to receive relevant comments on the development by MSHA of miner training regulations that are appropriate for miners employed at mines currently subject to a congressional training rider. Multiple public meetings are scheduled at seven locations across the country to give miners, their representatives, and mine operators, both small and large, a reasonable opportunity to present their views on what types of requirements will result in the most effective miner training.

MSHA is specifically interested in comments addressing the areas described below, although parties are

encouraged to submit comments on any relevant miner training issue.

Definitions

Should certain terms, including ''new miner'' and ''experienced miner'' be defined? If so, how should these terms be defined?

New Miner Training

Section 115 of the Mine Act lists several subject areas that must be covered by training for new inexperienced miners at surface mines, including:

Instruction in the rights of miners and their representatives under the Mine Act;

Use of self-rescue devices where appropriate and respiratory devices where appropriate;

Hazard recognition;

Emergency procedures;

Electrical hazards;

First aid;

Walkaround training;

The health and safety aspects of the task to which the miner will be assigned.

Which of these subjects should be taught before a new miner is assigned work, even if the work is done under close supervision?

Should training for inexperienced miners be given all at once, or over a period of time, such as several weeks or months? Should this decision be left to the discretion of the mine operator? What are the advantages and disadvantages of spreading training over an extended period of time?

Should supervisors be subject to the same training requirements as miners?

Task Training

Should training be required whenever a miner receives a work assignment that involves new and unfamiliar tasks?

Annual Refresher Training

Should specific subject areas be covered during annual refresher training? If so, what subject areas should be included?

Can the 8 hours of annual refresher training required by the Mine Act be completed in segments of training lasting less than 30 minutes?

Training Certificates

Should the records of training be kept by the mine operator at the mine site, or should the regulation allow records to be kept at other locations?

Qualifications of Instructors

Should there be minimum qualifications for persons who conduct miner training? If so, what kind of qualifications are appropriate?

Dated: October 28, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–29436 Filed 11–2–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–121–FOR]

Pennsylvania Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment adds a new section ''F'' entitled Government Financed Construction Contracts (GFCC) to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. The proposed amendment also includes the Program Requirements and Monitoring Requirements related to the use of GFCC for that purpose. The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied in cases involving less than 50% financing only in the limited situation where the construction constitutes a government approved and administered abandoned mine land reclamation project under Title IV of SMCRA. The amendment is also intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area.

The comment period is being reopened because Pennsylvania has, at OSM's request, submitted portions of its State law which it believes provides specific authority to allow the State Regulatory Authority to approve exemptions for the incidental removal of coal pursuant to government-financed reclamation projects.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.] November 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Robert Biggi, Field Office Director, at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office. Mr. Robert J. Biggi, Director, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack) 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack) 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33079). Subsequent actions concerning the AMLR program amendments are identified at 30 CFR 938.20 and 938.25.

II. Description of the Proposed Amendment

By letter dated November 21, 1997 (Administrative Record No. PA–855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed Program Amendment No. 2 to the Pennsylvania Abandoned Mine Reclamation Plan. In addition, PADEP also submitted the following documents: Basis of Authority for the Proposed Amendment, AML Amendment Conformance with 30 CFR Section 884.13, Assistant Counsel's Opinion of Authority for GFCC, PADEP Organization Chart and the Office of Mineral Resources Management Organization Chart. The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed

construction exemption in Section 528 of SMCRA to be applied in certain cases involving less than 50% financing. The inspection forms and related instructions to be utilized to monitor the GFCC program are part of the amendment. Pennsylvania submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67590) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 28, 1998. However, OSM's review determined that several items contained in the proposed amendments required clarification. As a result, a letter requesting clarification on three items was sent to Pennsylvania dated June 5, 1998 (Administrative Record No. PA–855.08). Pennsylvania initially responded in its letter dated June 17, 1998 (Administrative Record No. PA 855.09), that it would require additional time to respond to OSM's request, and that it expected to provide a response by July 15. A response was received from Pennsylvania in its letter dated July 7, 1998 (Administrative Record No. PA 855.10). Therefore, OSM reopened the public comment period regarding Pennsylvania's response in the July 28, 1998, **Federal Register** (63 FR 40237). The comment period closed on August 12, 1998 and no comments were received. However, OSM subsequently informed Pennsylvania that its program appeared to lack the statutory authority to implement the exemption for incidental coal removal pursuant to government-financed reclamation projects. Therefore, in a letter dated October 8, 1998 (Administrative Record No. PA 855.12), Pennsylvania subsequently submitted portions of its state law which it believes provides specific authorization to implement the proposed changes to its AML Plan. Pennsylvania requested to have the statutory provisions included as part of Pennsylvania's Abandoned Mine Reclamation Plan Amendment. The proposed additions are as follows:

52 P.S. § 1396.3

''Government-financed reclamation contract'' shall mean:

(1) For the purposes of Section 4.8, a federally-funded or state-funded and approved abandoned mine reclamation contract entered into between the department and an eligible person or entity who has obtained special authorization to engage in incidental and necessary extraction of coal refuse pursuant to government-financed reclamation which is either:

(i) a State-financed reclamation contract less than or equal to fifty thousand dollars ($50,000) total project costs, where up to five hundred (500) tons of coal is extracted, including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of the no-cost contract;

(ii) a State-financed reclamation contract authorizing the removal of coal refuse, including where reclamation is performed by the contractor under the terms of the no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area;

(iii) a State-financed reclamation contract greater than fifty thousand dollars ($50,000) total project costs or a federally-financed abandoned mine reclamation project: Provided, That the department determines in writing that extraction of coal is essential to physically accomplish the reclamation of the project area and is incidental and necessary to reclamation; or (iv) federally financed or state-financed extraction of coal which the department determines in writing to physically extinguish an abandoned mine fire that poses a threat to the public health, safety and welfare.

(2) For purposes of determining whether or not extraction of coal is incidental and necessary under section 4.8, the department shall consider standard engineering factors and shall not in any case consider the economic benefit deriving from extraction of coal. Necessary extraction of coal shall in no case include:

(i) the extraction of coal in an area adjacent to the previously affected area which will be reclaimed; or

(ii) the extraction of coal beneath the previously affected area which will be reclaimed.

''Surface mining activities'' shall mean the extraction of coal from the earth or from waste or stockpiles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. ''Surface mining activities'' shall not include any of the following:

(1) Extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8.

(2) Extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board.

(3) The reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the department.

(4) Activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations.

''No-cost reclamation contract'' shall mean a contract entered into between the department and an eligible person for the purpose of reclaiming unreclaimed abandoned mine lands and which does not involve the expenditure of Commonwealth funds.

§ 1396.4h. [also referred to as ''section 4.8''] Government-financed reclamation contracts authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse

(a) No person may engage in the extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract without a valid surface mining permit issued pursuant to this act unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The department shall not be required to grant a special authorization to any eligible person. The department may, however, in its discretion, grant a special authorization allowing incidental and necessary extraction of coal or allowing removal of coal refuse pursuant to a government-financed reclamation contract in accordance with this section. (b) Only eligible persons may secure special authorization to engage in incidental and necessary extraction of coal or to engage in removal of coal refuse pursuant to a government-financed reclamation contract. A person is eligible to secure a special authorization if he can demonstrate, at a minimum, to the department's satisfaction that:

(1) The contractor or any related party or subcontractor which will act under its direction has no history of past or continuing violations which show the contractor's lack of ability or intention to comply with the acts or the rules and regulations promulgated thereunder, whether or not such violation relates to any adjudicated proceeding agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purposes o′f this section, the term ''related party'' shall mean any partner, associate, officer, parent corporation, affiliate or person by or under common control with the contractor.

(2) The person has submitted proof that any violation related to the mining of coal by

the contractor or any related party or subcontractor which will act under its direction of any of the acts, rules, regulations, permits or licenses of the department has been corrected or is in the process of being corrected to the satisfaction of the department, whether or not the violation relates to any adjudicated proceeding, agreement, consent order or decree or which resulted in a cease order or civil penalty assessment. For purposes of this section, the term ''related party'' shall mean any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the contractor.

(3) The person has submitted proof that any violation by the contractor or by any person owned or controlled by the contractor or by a subcontractor which acts under its direction of any law, rule or regulation of the United States or any state pertaining to air or water pollution has been corrected or is in the process of being satisfactorily corrected.

(4) The person or any related party or subcontractor which will act under the direction of the contractor has no outstanding unpaid civil penalties which have been assessed for violations of either this act or the act of June 22, 1937 (P.L. 1987, No. 394), known as ''The Clean Streams Law'' (35 P.S. § 691.1 et seq.), in connection with either surface mining or reclamation activities.

(5) The person or any related party or subcontractor which will act under the direction of the contractor has not been convicted of a misdemeanor or felony under this act or the acts set forth in subsection (e) and has not had any bonds declared forfeited by the department.

(c) Any eligible person who proposes to engage in extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract may request and secure special authorization from the department to conduct such activities under this section. The department may issue the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction of coal or authorizing removal of coal refuse and the person requesting such authorization has affirmatively demonstrated to the department's satisfaction that he has satisfied the provisions of this section. A special authorization shall only be granted by the department prior to the commencement of extraction of coal or commencement of removal of coal refuse on a project area. In order to be considered for a special authorization by the department, an eligible person must demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned mine lands.

(2) The extraction of coal will be incidental and necessary, or the removal of coal refuse will be required, to accomplish the reclamation of abandoned mine lands pursuant to a government-financed reclamation contract.

(3) Incidental and necessary extraction of coal or in removal of coal refuse will be confined to the project area being reclaimed.

(4) All extraction of coal or in removal of coal refuse and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to:

(i) the applicable environmental protection performance standards promulgated in the rules and regulations relating to surface coal mining listed in the government-financed reclamation contract; and

(ii) additional conditions included in the government-financed reclamation contract by the department.

(d) The contractor will pay any applicable per-ton reclamation fee established by the United States Office of Surface Mining Reclamation and Enforcement (OSMRE) for each ton of coal extracted pursuant to a government-financed reclamation project.

(e) Prior to commencing extraction of coal or commencement of removal of coal refuse pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, ''The Clean Streams Law'', the act of January 8, 1960 (1959 P.L. 2119, No. 787) (35 P.S. § 4001 *et. seq.*), known as the ''Air Pollution Control Act'', the act of September 24, 1968 (Pub. L. 1040, No 318) (52 P.S. § 30.51 *et seq.*), known as the ''Coal Refuse Disposal Control Act,'' where applicable, the act of November 26, 1978 (Pub. L. 1375, No. 325) (32 P.S. § 693.1 *et seq.*), known as the ''Dam Safety and Encroachments Act, and, where applicable, the act of July 7, 1980 (Pub. L. 380, No. 97) (35 P.S. § 6018.101 *et seq.*), known as the ''Solid Waste Management Act''. An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts herein above enumerated. For government-financed reclamation contracts other than a no-cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above. The performance bond which is provided by the contractor under a contract other than a government-financed reclamation contract shall be deemed to satisfy the requirements of this section provided that the amount of the bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection. For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

(f) The department shall insert in government-financed reclamation contracts conditions which prohibit coal extraction pursuant to government-financed reclamation in areas subject to the restrictions of Section 4.2 (52 P.S. § 1396.4b.), except as surface coal mining is allowed pursuant to that section.

(g) Any person engaging in extraction of coal pursuant to a no-cost government-financed reclamation contract authorized under this section who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate supply adequate in quantity and quality for the purposes served.

(h) Extraction of coal or removal of coal refuse pursuant to a government-financed reclamation contract cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal. Nothing in this section shall prohibit the department's entry onto land where such entry is necessary in the exercise of police powers.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15 and 30 CFR 732.17, OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of program amendments. Specifically, OSM is seeking comments on the incorporation of the statutory references as submitted on October 8, 1998 (Administrative Record No. PA 855.12) into the program amendment submission. Comments should address whether the proposed amendment with these statutory references and definitions satisfy the applicable program approval criteria of 30 CFR 884.15 and 30 CFR 732.17. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order

12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribal, not by OSM. These standards are also not applicable to the actual language of State regulatory programs and program amendments for the same reason. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs, program amendments, abandoned mine land reclamation plans and revisions thereof submitted by the States must be based solely on a determination of whether the submittal is consistent with Titles IV and V of SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, 732 and 884 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)), and since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 27, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–29397 Filed 11–2–98; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–191; RM–9351]

Radio Broadcasting Services; Leesville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pene Broadcasting Company, Inc., licensee of Station KJAE(FM), Channel 224A, Leesville, Louisiana, seeking the substitution of Channel 228C3 for Channel 224A and modification of its license accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 31–11–29 NL and 93–14–35 WL.

Petitioner's modification proposal is consistent with the provisions of Section 1.420(g)(2) of the Commission's Rules since it demonstrated that an additional equivalent channel can be allotted to Leesville in the event other parties indicate an interest in the proposal. Therefore, we will not accept competing expressions of interest in the use of Channel 228C3 at Leesville.

DATES: Comments must be filed on or before December 14, 1998, and reply comments on or before December 29, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Denise B. Moline, Esq., 100 Carpenter Drive, Suite 100, P.O. Box 217, Sterling, VA 20167.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–191, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29320 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–189, RM–9377]

Radio Broadcasting Services; Manzanita, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by John L. Zolkoske seeking the allotment of Channel 235A to Manzanita, OR, as the community's first local aural service. Channel 235A can be allotted to Manzanita in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45–43–06 North Latitude; 123–56–18 West Longitude. Canadian concurrence in the allotment is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 14, 1998, and reply comments on or before December 29, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John L. Zolkoske, 915 N. Douglas Avenue, Stayton, OR 97383 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–189, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29318 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Part 1420

[Docket No. BTS–98–4659]

RIN 2139-AA05

Revision to Reporting Requirements for Motor Carriers of Property

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Transportation Statistics (BTS) proposes to adopt new accounting and reporting provisions that would provide data for current needs while significantly reducing the annual compliance burden. This rulemaking is being conducted to implement portions of the ICC Termination Act of 1995, which transferred the motor carrier financial and operating data collection program to the Department of Transportation and made several changes to the motor carrier program. Class I motor carriers would file much shortened quarterly reports and file a simplified annual report form based largely on the current Form M–2. Class II carriers would continue filing only annually and would use the same simplified form as class I carriers. In addition, the Bureau proposes a system for considering requests for exemptions from filing and from public release of data. With this document, BTS is also withdrawing its proposal to establish a negotiated rulemaking advisory committee to assist in developing the regulations. This rulemaking action is taken on the Bureau's initiative.

DATES: Comments must be submitted by December 3, 1998.

ADDRESSES: Please direct comments to the Docket Clerk, Docket No. BTS–98–4659, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, D.C. 20590, from 10 a.m. to 5 p.m. ET, Monday through Friday, except Federal Holidays.

Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–98–4659 . The Docket Clerk will date stamp the postcard and mail it back to the commenter.

If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–2, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. Internet users can access all comments received by the U.S. DOT Dockets, Room PL401, at the address: http://dms.dot.gov. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512-1661. If you have access to the Internet, you can obtain an electronic copy at http://www.access.gpo.gov/su—⅔docs/aces/aces140.html or http://www.bts.gov/mcs/rulemaking.html.

II. Background

Authority

The Secretary of Transportation has authority to establish regulations for the collection of certain data from motor carriers of property and others. Section 103 of the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (codified at 49 U.S.C. 14123). This authority has been delegated to the Director of the Bureau of Transportation Statistics (BTS). 49 CFR 1.71.

Brief History of the Program

The Interstate Commerce Commission (ICC) collected financial data from

regulated motor carriers from the 1930's until its sunset at the end of 1995, when data collection was transferred to the Department of Transportation (DOT). See 49 U.S.C. 11145 and its implementing regulations at 49 CFR Part 1420.[1] Between 1978 and 1994, ICC significantly reduced the reporting requirements. It substantially shortened report forms and eased record retention requirements. These changes followed the shift in the ICC's focus from close economic regulation of the motor carrier industry to industry oversight. The last revision to accounting and reporting requirements, ICC's Ex Parte No. MC–206, 10 I.C.C.2d 329 (1994), contains additional background information.

The Current Program

The data collection program, as currently specified, has been in place since 1994, and is set forth in 49 CFR Part 1420. For motor carriers of property, the current regulations create three classes of carriers based on revenue. Class I carriers are those with annual operating revenues of $10 million or more, and they file annual report Form M–1 and quarterly report Form QFR. Class II carriers have annual operating revenues of between $3 and 10 million, file a simpler annual report, Form M–2, and do not file a quarterly report. Class III carriers have annual operating revenues of less than $3 million and are not required to file any periodic financial reports.

Unless otherwise prohibited by law, individual carrier reports are made available to the public. BTS is aware of three federal agencies that use the data regularly—the Bureau of Economic Analysis (in developing the national accounts), the Department of Defense's Military Traffic Command (to help assess potential carriers for shipping military goods), and the General Services Administration (to help in evaluating its shipment rates). Other agencies have used the data for special studies. Private sector users include motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users.

The New Statutory Provisions

This rulemaking is being conducted to implement the ICC Termination Act of 1995 (the Act), which abolished the ICC and transferred some former ICC functions to DOT. Revision is necessary because the Act made several changes to the program. Similar to the legislation replaced by the Act, then codified at 49 U.S.C. 11145, the Act requires DOT to collect certain data from motor carriers of property and motor carriers of passengers:

> The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

The former 49 U.S.C. 11145 did not explicitly charge ICC to collect information relevant to safety and did not specify minimum data to be collected. The Act also allows DOT to collect certain other data as needed:

> The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

The Act specifies the criteria to be used in designing the reporting program. DOT must consider: (1) safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. In the Act, Congress has also explicitly called on DOT to ''streamline and simplify'' these reporting requirements to the maximum extent practicable.

Unlike the former 49 U.S.C. 11145, the Act authorizes two types of exemptions from the reporting requirements. Each exemption is based on certain criteria and is granted for a three-year period. The first is an exemption from filing report forms. The requestor ''must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.'' The second is an exemption from public release of data reported by the carrier. Similar to the other exemption, the requestor must demonstrate that ''the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.'' Further, for the latter exemption the requestor must not be a publicly held corporation or must not be subject to financial reporting requirements of the Securities and Exchange Commission.

In addition to implementing the Act, the proposed changes are being made within the framework of other policies and in light of current conditions. The Paperwork Reduction Act of 1995 set a government-wide goal for the reduction of information collection burdens by at least 25 percent by the end of fiscal year 1998 and calls on agencies to improve the quality and use of federal information to strengthen decision making, accountability, and openness in government and society. The President's Regulatory Reinvention Initiative asked agencies to reduce by half the frequency of reports that the public is required to provide. As the motor carrier industry continues to experience structural changes and with the sunset of the ICC, the data needs of the public and private sectors have changed. Modernization must also take into account recent significant improvements in technologies to collect, process, and disseminate data.

Proposed Changes Regarding the Reporting Forms

In determining the data items to be collected, BTS started with the income statement and balance sheet of the current Form M–2, since these elements are required under the new Act. From this starting point, data items, and the amount of detail for data items, were added or subtracted. In applying the four criteria, BTS received information from a variety of sources: comments received during the recent renewal process for Forms M–1, M–2, and QFR, comments received during the proposal to conduct negotiated rulemaking, customer feedback, and experience gained in administering the data collection program. Based on these, BTS is proposing several changes to the reporting requirements. As detailed below, we invite your comments on this proposal.

Under the proposal, both class I and class II carriers would submit annually a modified version of Form M–2 to be called Form M. Quarterly reporting would be retained for class I carriers but would be drastically reduced. The Bureau believes that the information on the new Form M and on the modified QFR would serve the large majority of current information needs, while reducing the burden on industry by 45 percent. The number of data items for Form M would be slightly less than the current Form M–2's and we estimate respondent burden would drop from ten hours to nine for class II carriers. Class I carriers would experience a greater decrease, from the current 25 burden hours for Form M–1 to nine hours for the new form. We estimate that the burden hours for the new Form QFR would be reduced from two hours to a

[1] The regulations were recently transferred from 49 CFR Part 1249 to 49 CFR Part 1420. *See Reports of Motor Carriers; Redesignation of Regulations Pursuant to the ICC Termination Act of 1995,* 63 FR 52192 (September 30, 1998).

half hour. The change in reporting burden is summarized in the tables below.

	Number of carriers	Burden hours/report		Total hours
		Annual	Quarterly	
Current				
Class I	900	25	2	29,700
Class II	1,900	10	.....	19,000
Total	2,800	.....	.....	48,700
Under proposed changes				
Class I	900	9	.5	9,900
Class II	1,900	9	.....	17,100
Total	2,800	.....	.....	27,000

Proposal regarding public release of data

Unlike the former 49 U.S.C. 11145, the Act explicitly authorizes two types of exemptions—an exemption from the reporting requirements and an exemption from public release of data. For each, the requestor must demonstrate, at a minimum, that the exemption is required to avoid competitive harm. If a carrier meets the applicable standard and is granted confidentiality, business information would not be publicly disclosed. The carrier would then no longer qualify for an exemption from filing. Therefore, BTS proposes to consider only requests for exemptions from public release, and not for exemptions from reporting requirements. With confidentiality protection, confidential information would not be released publicly, and competitive harm would no longer be a concern.

Under the Act, 49 U.S.C. 14123(c), requests for confidentiality must go through a notice and comment period and DOT must make a decision within 90 days of the request. BTS proposes the following procedure. Petitions relating to a current year's report must be received by the report's due date. The petition can be made either before submission of the report or simultaneous with submission. Carriers filing a petition after a report's deadline will not be able to later request confidentiality for the report. The report either would have already been submitted, and therefore already been available to the public, or the report should have been submitted but was not. Regarding content of the petition, at a minimum it must contain specific evidence that the carrier is likely to suffer competitive harm.

DOT will publish a **Federal Register** notice listing the petitions received for a given report and announcing a 30-day public comment period. DOT will make a decision on the petitions within 90 days of the report's due date. By waiting until all petitions for exemptions are received for a given report, those who wish to comment will be able to do so at one time rather than throughout the year. DOT will not release a petitioning carrier's reports to the public while its petition is pending.

Copies of the Forms

You can request copies of current or proposed forms from the contact listed in this notice. If you have access to the Internet, you can also obtain copies at http://www.bts.gov/mcs/rulemaking.htm.

Proposal To Establish a Negotiated Rulemaking Advisory Committee

BTS had earlier proposed establishing a negotiated rulemaking advisory committee in 61 FR 64849 (Dec. 9, 1996). The committee was to consider relevant issues and attempt to reach a consensus in developing regulations to implement the ICC Termination Act of 1995 regarding motor carriers of property. After receiving comments on this proposal and holding a public meeting on the subject, BTS determined that this process would not provide a significant advantage over conventional informal rulemaking. One of the factors to consider before choosing negotiated rulemaking is whether there is a reasonable likelihood that a committee will reach consensus on the proposed rule within a fixed period of time. BTS believes that consensus would not be reached in these circumstances on several of the issues, primarily on public release of the reports.

III. Request for Comments

The goal of this proposed rulemaking is to reach an equitable and practical balance, within the context of the ICC Termination Act of 1995, between the need for information and the goal of reducing reporting burden. BTS examined the accounting and reporting requirements in an effort to continue collecting meaningful data on the motor carrier industry while streamlining these requirements where possible. This proposal would create a simplified report for those carriers earning over $10 million in annual operating revenues while continuing to provide data helpful to understanding the industry. It would also implement a process for companies to seek confidentiality protection to avoid competitive harm. BTS requests comments concerning the above revisions to the information collection. You may wish to address one or more of the following topics: (1) Whether particular data items should be included or deleted from the annual and quarterly reporting requirements and why; (2) whether the instructions for the data items should be carried over from the current forms or whether they should be modified; (3) whether BTS should continue quarterly reporting; (4) how your comments to the proposal relate to the four areas of consideration listed in 49 U.S.C. 14123(b); (5) whether BTS accurately estimated the reporting burden and costs; (6) how BTS can minimize reporting burden, including the use of automated collection techniques or other forms of information technology; (7) the proposed process for handling requests for exemptions; (8) ways to reduce the burden on any segments of the industry that may be disproportionately affected, such as small entities; (9) how BTS can enhance the quality, utility, or clarity of the information collected; and (10) whether the regulations are clearly written.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The proposal would reduce industry reporting burden by 21,700 hours or 45 percent. BTS estimates that the annual cost of reporting to be just over $1 million for the industry. This breaks down to $418 per year for class I carriers and $342 per year for class II carriers. The estimate is based on reporting costs of $38 per hour including overhead.

The major beneficiaries of the data collection are the federal government, the motor carrier industry, industry associations, transportation investment analysts, transportation research analysts, and motor carrier safety analysts. The program provides data that are used in developing the national accounts, data for monitoring industry trends, and data useful to the public and private sectors regarding the operation and health of the trucking industry and individual carriers.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism'') and DOT has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Initial Regulatory Flexibility Analysis

I certify this proposed rule will not have a significant economic impact on a substantial number of small entities. The definition of ''small business'' is contained in the Small Business Administration's small business size standard regulations. For motor carriers of property, small businesses are those with annual receipts of up to $18.5 million. Under the current classification, there are about 2,800 reporting carriers of which an estimated 2,180 (or 78 percent) are small businesses (all class II carriers and 31 percent of class I carriers are classified as small businesses). The proposed amendments would decrease reporting burden for all reporting carriers. Class I carriers would realize a 67 percent reduction in burden hours while class II would realize a 10 percent reduction.

Environmental Assessment

The Bureau of Transportation Statistics has analyzed the proposed amendments for the purposes of the National Environmental Protection Act. The proposed amendments will not have any impact on the quality of the human environment. Accordingly, an Environmental Impact Statement is not required.

Initial Paperwork Reduction Act Analysis

The reporting and record keeping requirements associated with this rule are being sent to the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35 under OMB Numbers 2139–0002, 2139–0004, and 2139–0005. Administration: Bureau of Transportation Statistics. Titles: Quarterly Report of Class I Motor Carriers of Property, Annual Report of Class I Motor Carriers of Property, and Annual Report of Class II Motor Carriers of Property. Need for Information: information on the health of the motor carrier of property industry, its impact on the economy, and industry changes that may affect national transportation policy. Frequency: Annually. Burden Estimate: 27,000 annual hours. Average Annual Burden Hours per Respondent: class I carriers—11 annual hours, class II carriers—9 annual hours. For further information contact: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention Desk Officer for the Bureau of Transportation Statistics or David Mednick at the address listed above under **FOR FURTHER INFORMATION CONTACT.**

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA05 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 1420

Motor carriers, Reporting and classification.

Proposed Rule

Accordingly, the Bureau of Transportation Statistics proposes to amend 49 CFR Part 1420 Reports of Motor Carriers, as follows:

PART 1420—REPORTS OF MOTOR CARRIERS

The authority citation for Part 1420 is revised to read as follows:

Authority: 49 U.S.C. 14123.

2. Section 1420.1 is revised to read as follows:

§ 1420.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual authority carriers.

(a) *Annual Report Form M.* All class I and class II common and contract carriers of property, including household goods and dual authority motor carriers, must file Motor Carrier Annual Report Form M. Carriers must file the annual report on or before March 31 of the year following the year to which it relates. For classification criteria, see § 1420.2.

(b) *Quarterly Report Form QFR.* All class I common motor carriers of property and class I household goods motor carriers must complete and file motor carrier Quarterly Report Form QFR (Form QFR). The quarterly accounting periods end on March 31, June 30, September 30, and December 31. The quarterly reports must be filed within 30 calendar days after the end of the reporting quarter.

(c) Carriers must file the quarterly and annual reports in duplicate with the Bureau of Transportation Statistics, K–27, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. You can obtain copies of the report forms from the Bureau of Transportation Statistics.

3. In section 1420.2, paragraph (b)(4) is revised to read as follows:

§ 1420.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.

* * * * *

(b) * * *

(4) Carriers must notify the Bureau of Transportation Statistics (BTS) of any change in classification or any change in annual operating revenues that would cause a change in classification. The carrier may request a waiver or an exception from the regulations in this part in unusual or extenuating circumstances, where the classification process will unduly burden the carrier, such as partial liquidation or curtailment or elimination of contracted services. The request must be in writing, specifying the conditions justifying the waiver or exception. BTS will notify the carriers of any change in classification.

* * * * *

4. In section 1420.2(b)(5), remove the term ''an Annual Report (Form M–1 or

Form M–2)'' and add ''Annual Report Form M'' in its place.

5. In section 1420.2, paragraph (c) is removed (Note A is unchanged).

6. Section 1420.6 is added to read as follows:

§ 1420.6 Requests for exemptions from public release.

(a) *In general.* This section governs requests for exemptions from public release of reports filed under § 1420.1.

(b) *Criteria.* The Bureau of Transportation Statistics (BTS) will grant a request upon a proper showing that:

(1) The filer is not a publicly held corporation or the filer is not subject to financial reporting requirements of the Securities and Exchange Commission; and

(2) The exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4).

(c) *Valid requests.* For a request to be valid, it must contain, at a minimum, assertions that the request meets the criteria in paragraph (b) of this section, including specific evidence that the carrier is likely to suffer competitive harm.

(d) *Procedure.* Requests for an exemption under this section may be made at any time during the year. However, a request will be deemed applicable to only those reports due on or after the date the request is received. Petitions received after a report's due date will only be considered for the following year's or quarter's report. Except as provided in this paragraph, requests must be made separately for report Forms M and QFR. After each due date of reports specified in § 1420.1, DOT will publish a notice in the **Federal Register** listing all of the valid pending requests for an exemption from public release and giving a 30-day public comment period. DOT will grant or deny each request no later than 90 days after the due date of the report for which the request applies. DOT will either publish a notice in the **Federal Register** specifying whether the request was granted or denied, or will give notice directly to the carrier, or will do both. A carrier submitting a petition regarding Form M can also request that it cover Form QFR, in which case DOT will decide both requests at the same time. Assuming the carrier's fiscal year coincides with the calendar year, the following table summarizes report and petition deadlines:

Report	Report and petition due	Decision due
Annual Form M	March 31	June 30.
First Quarter Form QFR	April 30	July 31.
Second Quarter Form QFR	July 31	October 31.
Third Quarter Form QFR	October 31	January 31.
Fourth Quarter Form QFR	January 31	April 30.

(e) *Pendency.* A request is deemed pending from the date it is received by BTS until it is granted or denied by BTS. BTS will not release publicly, unless otherwise required by law, any report for which a valid request for an exemption from public release is pending.

(f) *Period of exemptions.* If a request for an exemption under this section is granted, BTS will not publicly release any reports covered by the granted exemption, unless otherwise required by law. Exemptions granted under this section will cover a period of three reporting years.

Note: The following forms will not appear in the Code of Federal Regulations.

Robert A. Knisely,

Deputy Director.

BILLING CODE 4910–FE–P

1998 FORM QFR (draft only)

Class I
Motor Carriers of Property
and Household Goods
Quarterly Report

U.S. DOT/ Bureau of Transportation Statistics
K-27
400 7th St., SW
Washington, DC 20590

_____ **Quarter:** ☐ 1 ☐ 2 ☐ 3 ☐ 4
Motor Carrier Number

_____
U.S. DOT Number

_____
Name of company

_____
Trade or doing business as

_____
Street address

_____ ( )
City State Zip Telephone

Contact (for purposes of this report):

_____ ( )
Contact name Title Telephone

Mailing Address (if different from above):

_____
Mailing address

_____
City State Zip

Affiliated Companies:

	Name	MC number	U.S. DOT number
parent			
affiliates			

Operating Revenues	
1 Freight operating revenue	
2 Household goods carrier operating revenue	
3 Other operating revenue	
4 **Total operating revenue**	

Operating Expenses	
5 Freight operating expenses	
6 Household goods carrier operating expenses	
7 **Total operating expenses**	

8 **Net Operating Income (Loss)**	

CERTIFICATION

I hereby certify that this report was prepared by me or under my supervision, that I have examined it, and that the items herein reported on the basis of my knowledge are correctly shown.

Name _____ Signature _____

Title _____ Date _____

1998 FORM M (draft only)

Class I & II

Motor Carriers of Property
and Household Goods
Annual Report

U.S. DOT/ Bureau of Transportation Statistics
K-27
400 7th St., SW
Washington, DC 20590

_____
Motor Carrier Number

_____
U.S. DOT Number

_____
Base state

_____
Base state registration number

Accounting Period:

calendar year ☐
fiscal year ☐ ending _____

_____
Name of company

_____
Trade or doing business as

_____
Street address

_____ ( )
City State Zip Telephone

Contact (for purposes of this report):

_____ ( )
Contact name Title Telephone

Mailing Address (if different from above):

_____
Mailing address

_____
City State Zip

Affiliated Companies:

	Name	MC number	U.S. DOT number
parent			
affiliates			

Schedule 100 - Balance Sheet

Current Assets

101	Cash and equivalents	
102	Accounts receivable	
103	Notes receivable	
104	Other current assets	
105	**Total current assets**	

Carrier Operating Property

106	Carrier operating property	
107	Less accumulated depreciation	
108	**Net carrier operating property**	

Other Long Term Assets

109	Total intangible property	
110	Other long term assets	
111	**Total other long term assets**	
112	**Total Assets**	

Current Liabilities

113	Accounts payable	
114	Notes payable	
115	Taxes payable	
116	Current portion of long term debt	
117	Other current liabilities	
118	**Total current liabilities**	

Long term Payables

119	Long term debt	
120	Other long term liabilities	
121	**Total long term payables**	
122	**Total Liabilities**	

Owner's Equity or Capital

123	Retained earnings (if corporation)	
124	Other equity capital (if corporation)	
125	Proprietary or partnership capital (if not a corporation)	
126	**Total owner's equity or capital**	

127	**Total Liabilities and Equity**	

Schedule 200 - Income Statement

Operating Revenues

201	Freight revenue	
202	Household goods carrier operating revenue	
203	Other operating revenue	
204	**Total operating revenue**	

Wages and Salaries

205	Drivers' and helpers' wages, not including owner-operator driver wages	
206	Other wages and salaries	
207	Total fringe benefits	
208	Commission agent fees (HHG only)	
209	**Total salaries, wages, and fringe benefits**	

Operating Supplies and Expenses

210	Fuel, oil, and lubricants	
211	Outside maintenance	
212	Vehicle parts	
213	Tires and tubes	
214	Other operating supplies and expenses	
215	**Total operating supplies and expenses**	

Insurance Expenses

216	Cargo loss and damage premiums and claims paid	
217	Other liability and property damage premiums and claims paid	
218	Other insurance expense	
219	**Total insurance expenses**	

Miscellaneous Expenses

220	Fuel taxes	
221	Operating taxes and licenses	
222	Depreciation and amortization expenses	
223	Equipment and driver rentals	
224	Other purchased transportation - railroads	

225	Other purchased transportation - motor carriers, water, air, and other	
226	Communications and utilities	
227	Other operating expenses	
228	**Total miscellaneous expenses**	
229	**Total Operating Expenses**	
230	**Net Operating Income (Loss)**	

Other Income and Expenses

231	Other non-operating revenue	
232	Other non-operating expenses	
233	Net other income (loss)	
234	Gain (loss) on disposition of assets	
235	Income taxes	
236	**Total other income and expenses**	
237	**Net Income (Loss)**	

Schedule 300 - Operating Statistics

All Carriers:

301	Miles, intercity revenue freight - highway service	
302	Miles, intercity revenue freight - rail, water, and air services	
303	**Total miles**	
304	Ton-miles, intercity revenue freight - highway	
305	Ton-miles, intercity revenue freight - rail, water, and air services	
306	**Total ton-miles**	
307	Tons of revenue freight carried in intercity service	

Household Goods Carriers (HHG) Only:

	Category	Revenues (intercity common & contract carriage)	Tons (actual weight)	Number of shipments
308	Personal effects and property used or to be used in a dwelling			
309	Furniture, fixtures, equipment, and the property of stores, offices, etc.			

310	Articles of an unusual nature or value (objects of art, etc.)			
311	**Total**			
312	Moving revenue - intercity common carrier		XXXXXXXXXXX	XXXXXXXXXXX
313	Moving revenue - intercity contract carrier		XXXXXXXXXXX	XXXXXXXXXXX

Schedule 400 - Other Operating Information

Revenue equipment		Number of units at start of year	Units acquired during year		Number of units retired/ disposed of during the year
			Number	Cost	
401	Straight trucks - owned				
402	Straight trucks - leased				
403	Truck-tractors - owned				
404	Truck-tractors - leased				
405	Trailers and semi-trailers - owned				
406	Trailers and semi-trailers - leased				
407	Other				

Revenue Commodity Group		Mark with an X
408	General freight	
409	Household goods	
410	Specialty freight	

Drivers Subject to Federal Motor Carrier Safety Regulations

411	Non-CDL drivers	
412	CDL drivers	
413	**Total drivers**	

CERTIFICATION

I hereby certify that this report was prepared by me or under my supervision, that I have examined it, and that the items herein reported on the basis of my knowledge are correctly shown.

Name Signature

Title Date

[FR Doc. 98–29412 Filed 11–2–98; 8:45 am]
BILLING CODE 4910–FE–C

Notices

Federal Register

Vol. 63, No. 212

Tuesday, November 3, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: Notice is hereby given that USDA proposes to create a new Privacy Act system of records, USDA/RMA, entitled ''Dairy Options Pilot Program (DOPP), USDA/RMA.''

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on December 14, 1998 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the ''routine uses'' of the system be published for comment, USDA invites comments on all portions of this notice. Comments must be received by the contact person listed below on or before December 3, 1998.

FOR FURTHER INFORMATION CONTACT: E. Heyward Baker, Director, Reinsurance Services Division, Risk Management Agency, Room 6727–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250, Telephone: (202) 720–0191.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records to be maintained by the Risk Management Agency (RMA) to support the DOPP; a program to educate dairy farmers in the use of options as risk management tools. The system contains data on purchases of options on milk futures contracts.

The purpose of DOPP is to educate dairy producers in the use of options contracts as risk management tools and to ascertain their particular usefulness to dairy producers in various regional markets. The program lasts 6 to 8 months for each participant. Over that time, RMA will train the producers and pay for 80 percent of the premiums of their options contracts and up to $30 in brokers fees per contract. Brokers play a key role in DOPP. Producers will select their own DOPP-eligible brokers and place orders through those brokers. Brokers will use an Internet-based communications system to provide to RMA data on participants' trading activity. RMA will use this data for program evaluation and compliance tracking purposes. Brokers will, themselves, be the subject of records in so far as each DOPP-eligible broker will have signed a contract with RMA and a profile on each broker will be a part of the DOPP software. In addition to tracking the trading activity of DOPP brokers, the system will identify the brokers as having attended a DOPP training session once they have complied with this requirement, thus identifying them as eligible to conduct trades for DOPP participants.

In conformance with 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, the Department of Agriculture has sent a report on the new system to the Chairman and Ranking Minority Member, Committee on Governmental Affairs, United States Senate; the Chairman and Ranking Minority Member, Committee on Government Reform and Oversight, U.S. House of Representatives; and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on _____, 1998.

Signed at Washington, D.C., on October 26, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–29347 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Thursday, November 19, 1998, in Centralia, Washington, at the King Oscar Motel (1049 Eckerson Road) in their meeting room. The meeting will begin at 9:30 a.m. and continue until 4:30 p.m. The purpose of the meeting is to present: (1) The 1999/2000 Timber Sale Program for the Gifford Pinchot National Forest, followed by discussion, advice, and recommendations; (2) Monitoring results; (3) a special presentation of the AMA landscape; and (4) a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: October 28, 1998.

Sandy Spurling,

Deputy Fire Staff.

[FR Doc. 98–29437 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee for Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of intent to reestablish at USDA.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to reestablish the Advisory Committee for Agriculture Statistics. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S.

Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

The Advisory Committee on Agriculture Statistics has provided input and direction to the census of agriculture program since the committee was first established on July 16, 1962. It has been particularly critical to have the committee as a valuable resource to USDA during the transfer of the census from the U.S. Department of Commerce.

The purpose of the committee is to make recommendations on census of agriculture operations including questionnaire design and content, publicity, publication plans, and data dissemination. Comments are requested on the establishment of this committee at USDA.

DATES: Comments on this notice must be received by January 7, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Donald M. Bay, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–2707.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix), notice is hereby given that the Secretary of Agriculture intends to reestablish the Advisory Committee on Agriculture Statistics, hereafter referred to as Committee. The purpose of the Committee is to advise the Secretary of Agriculture on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest and relevant to the duties of USDA. No other advisory committee or agency of USDA is performing the tasks that will be assigned to the Committee.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

A representative of the Bureau of the Census, U.S. Department of Commerce, serves as an ex-officio member of the Committee.

The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the food and fiber sector that can affect agriculture statistics activities.

The Secretary of Agriculture invites individuals to comment on the reestablishment of this committee at USDA.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Signed at Washington, D.C., October 27, 1998.

Reba Evans,

Acting Deputy Assistant Secretary for Administration.

[FR Doc. 98–29346 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Highline Breaks Watershed, Otero & Pueblo Counties, CO

AGENCY: Natural Resources Conservation Service (NRCS), DOA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the NRCS Regulations (7 CFR Part 560); the NRCS, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Highline Breaks Watershed, Otero and Pueblo Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Stephen F. Black, State Conservationist, 655 Parfet St., Room E200C, Lakewood, CO 80215–5517. (303) 236–2886, Extension 202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stephen Black, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is a plan for agricultural water management watershed protection. The planned works of improvement include accelerated technical assistance for implementing land treatment practices such as nutrient management, residue management, irrigation water management, and enduring practices to reduce deep percolation to improve water quality and protect the resource base.

The Notice of Finding No Significant Impact (FONSI), has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Stuart N. Simpson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Stephen F. Black,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which required intergovernmental consultation with State and local officials).

Finding of No Significant Impact for Highline Breaks Watershed Otero and Pueblo Counties, Colorado

Introduction

The Highline Breaks Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organizations and individuals. Data developed during the

assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 655 Parfet Street, Suite E200C, Lakewood, CO 80215–5517.

Recommended Action

The recommended plan is composed of management and enduring conservation practices to reduce deep percolation, runoff and irrigation induced erosion which will improve water quality of both surface and groundwater, the Arkansas River, as well as protect the resource base.

It is expected that 250 long-term land treatment contracts will be written during the project's life. Approximately 31,000 acres will be treated through project action.

The primary purposes are: (1) (watershed protection)—protect the soil resource base from excessive irrigation induced erosion, sedimentation, and reduce negative water quality impacts to surface and groundwater, including the Arkansas River, from nitrate loading, selenium, sediment, and salts; (2) (agriculture water management)—improve application uniformity.

Effects of Recommended Action

Expected impacts include: improved surface and groundwater quality, improved human health and safety, significant cropland erosion reduction, reduced sediment delivered to surface water bodies, reduced pollutant loading of wetlands, fishery habitat impairment reduced, improved wildlife habitat, reduced irrigation labor costs, reduced fertilizer use, reduced irrigation system operation and maintenance costs, greater irrigation effectiveness.

The proposed action will reduce nitrates, sediments, salts, and other pollutants leached into the ground water and delivered to the Arkansas River, thereby improving the water quality. It will also protect the watershed resource base by reducing irrigation induced erosion.

Significant negative effects to wetlands are not expected. However, if mitigation is necessary, it will be accomplished on a function for function basis.

Potentially, a slight improvement of the upland wildlife habitat is expected due to an increase in cover, forage, and water quality.

The proposed project will encourage and promote the agricultural enterprises in the watershed through education and accelerated technical and financial assistance. This will help maintain agriculture as a significant component in the area economy.

A list of the cultural resource sites within the watershed has been obtained from the State Historic Preservation Officer (SHPO). Their relationship to planned conservation measures was evaluated. Their survey concludes that no significant adverse impacts will occur to known cultural resources in the watershed should the plan be implemented. If however, during construction of enduring measures a new site is identified, construction will stop and the (SHPO) will be notified.

There are no wilderness areas in the watershed.

There are no threatened or endangered species known to exist in the watershed. However, prairie dog towns which could provide habitat for the black-footed ferret, will not be disturbed during project action.

As stated above, the primary objective of the project is to reduce the nitrates and selenium entering the Arkansas River and groundwater. Land treatment measures will reduce nitrate loading to ground and surface waters in the watershed as well as maintaining selenium levels within State and EPA standards.

Wildlife habitat may be temporarily disturbed in areas where enduring measures are implemented. It will recover however, within a short period of time.

The fishery in the Arkansas River will be impacted to a lesser degree by nitrates, selenium, and sediment after the project is complete.

No significant adverse environmental impacts will result from the installation of conservation measures. Some short-term habitat disturbances may occur during construction of enduring practices on irrigated cropland.

Alternatives

The recommended action is the most practical means of reducing the nitrates, selenium, salts, and sediment entering the Arkansas River and groundwater, thus protecting the resource base in the watershed. Since no significant adverse environmental impacts will result from installation of the measures and no other alternatives could meet the test of completeness, effectiveness, efficiency, and acceptability this alternative becomes the only viable candidate plan. The no action alternative was used for comparison purposes.

Consultation—Public Participation

The West and East Otero Soil Conservation Districts requested in March, 1989, that the watershed be considered for a Public Law 566 watershed project. A field review was made on March 22, 1989. The review team found that improved irrigation effectiveness, water quality, and watershed protection was needed. The Soil Conservation District and the NRCS Field Office decided that detailed information collection would be the first priority. Data on water quantity, quality, and practice needs were gathered. Ninety percent of the landowners expressed an interest in this project. The sponsors made an application for Public Law 566 planning assistance May 1, 1989.

The State Soil Conservation Board formally accepted the application on September 6, 1989. The Soil Conservation Services' West National Technical Center (WNTC) made a field reconnaissance October 25, 1989. They met with the irrigation company personnel, field offices, and conservation district officials. It was decided further data was needed to quantify the off-site effects from project action. In November, 1994, the NRCS Field Office, area staff and state staff developed a schedule to complete a preauthorization plan and plan of work. A revised application was developed in June, 1995. As a result, a water quality plan was developed for the area.

On June 26, 1995, a public scoping meeting was held to discuss the problems, needs, and possible effects from a project. Federal, State, and local agencies, and the general public were invited. This group helped give direction to the NRCS planners. A public response analysis was completed on the responses.

An environmental evaluation meeting was also held on June 26, 1995, to identify environmental concerns and issues and discuss how best to address those concerns.

Numerous newspaper articles, newsletters, and radio public service announcements have been aired to provide public information. Public meetings with the news media in attendance were held to gain input and inform the public.

A meeting was held with the Natural Resources Conservation Service (NRCS) field office, area staff, and sponsors in March, 1996, on the preauthorization report. A sponsors meeting was held in June, 1996, to determine the desirability of pursuing a planning authorization and review the preliminary plan. Potential alternatives and the responsibilities of each sponsor and NRCS were stressed in discussions. The SCD's have the right of eminent domain under authority established by state law. If needed, they are willing to fulfill their agreements to see that a plan is formulated and implemented. Planning

authorization was requested July 17, 1996.

The SCD boards have met regularly and provided positive leadership to the furthering of conservation and improvement of the watershed. Ongoing water quality, quantity and management practices are being installed by a combination of landowner, district and state funds. The two district boards cooperated in getting a HUA and 319 demonstration project, approved in FY–91, to show the value of surge irrigation and irrigation water management in the watershed area. The projects were enthusiastically accepted by the farmers.

In September, 1996, the watershed was approved for planning. A meeting was held in October, 1996, with field and area staffs, the State Water Resources Planning staff, and sponsors to review the Plan of Work and develop assignments to complete the watershed plan. A scoping meeting and environmental assessment meeting was held at this time.

The Watershed Plan was developed and reviewed with the sponsors at their board meetings on May 14, 1997. They requested that NRCS have a public meeting to present the plan to all interested parties. On December 3, 1997, a public meeting was held in Rocky Ford, Colorado. It was the consensus of those present to move forward into inter-agency review.

Specific consultation was conducted with the State Historic Preservation Officer concerning cultural resources in the watershed.

Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date has shown no unresolved conflicts related to the project plan.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impact on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Highline Breaks Watershed Plan is not required.

Dated: October 28, 1998.

Stephen F. Black,

State Conservationist.

[FR Doc. 98–29379 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to its action related to the construction of a 100 megawatt simple cycle combustion turbine electric generation plant in Southeast Missouri by Associated Electric Cooperative (Associated). The finding of no significant impact is the conclusion of an environmental assessment prepared by RUS. The environmental assessment is based on an environmental analysis submitted to RUS by Associated. RUS conducted an independent evaluation of the environmental analysis and concurs with its scope and content. The environmental analysis has been incorporated by reference in the environmental assessment.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250, telephone (202) 720–0468, E-mail bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The preferred site for the plant is located in Stoddard County, Missouri, approximately 1.2 miles east of Idalia on County Road E. As proposed, the project is a 100-MW, simple-cycle combustion turbine generator. It will be powered by a Westinghouse 501D5A simple cycle/dry low-nitrogen oxides combustor. Fuel for the plant will be natural gas. No backup source of fuel, such as number 2 fuel oil, is proposed. The plant will occupy approximately three acres and will be located at an existing 12 acre electric distribution substation site. The main generator unit will be approximately 40 feet wide and 140 feet long. The exhaust stack will be 50 feet high. This type of combustion turbine is typically used for peak power generation and would normally be expected to operate only a few hundred to a few thousand hours per year.

Alternatives considered to constructing the project as proposed included no action, conservation and load management, power purchases, combined cycle combustion turbine technology, and an alternative site location.

Copies of the environmental assessment and finding of no significant impact along with the environmental analysis are available for review at, or can be obtained from, RUS at the address provided herein or from Jerry Bindel, Associated Electric Cooperative, PO Box 754, Springfield, Missouri, 65801–0754 telephone (417) 885–9272. Mr. Bindel's E-mail address is jbindel@aeci.org. These documents are also available at Bloomfield Public Library, 200 Seneca Street, Bloomfield, Missouri. Interested parties wishing to comment on the adequacy of the environmental assessment should do so within 30 days of the publication of this notice. RUS will take no action that would approve clearing or construction activities related to proposed combined cycle power plant prior to the expiration of the 30-day comment period.

Dated: October 27, 1998.

Thomas L. Eddy,

Acting Assistant Administrator, Electric Program.

[FR Doc. 98–29435 Filed 11–2–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Financial Reports (QFR) Program.

Form Number(s): QFR–101(MG), QFR–101A(MG), QFR–102(TR), QFR–103(NB).

Agency Approval Number: 0607–0432.

Type of Request: Extension of a currently approved collection.

Burden: 77,616 hours.

Number of Respondents: 13,186.

Avg Hours Per Response: 2 hours and 2 minutes.

Needs and Uses: The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to calculation of key Government measures of national economic performance. The QFR Program provides timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. Primary users of QFR data are governmental

organizations charged with economic policy-making responsibilities. Other data users include foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations.

The Census Bureau has statutory authority granted in Title 13 USC, Section 91 and Public Law 105–252, signed into law by the President on October 9, 1998, to conduct the QFR program through September 30, 2005. This request is for extension of OMB approval.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly and annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 91 and P.L. 105–252.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29384 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–803]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Extruded Rubber Thread From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that extruded rubber thread (''ERT'') from Indonesia is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on April 20, 1998 (*see Notice of Initiation of Antidumping and Countervailing Duty Investigations: Extruded Rubber Thread from Indonesia* (63 FR 23267) (''Notice of Initiation'')), the following events have occurred:

On April 22, 1998, the Department of Commerce (''Department'') requested information from the U.S. Embassy in Indonesia to identify producers/exporters of the subject merchandise.

On May 28, 1998, the International Trade Commission (''ITC'') published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Indonesia of the subject merchandise (63 FR 29250).

On May 28, 1998, the Department issued the antidumping duty questionnaire to the following producers/exporters of ERT: P.T. Bakrie Rubber Industry (''Bakrie''), P.T. Swasthi Parama Mulya (''Swasthi''), P.T. Perkebunan Nusantara III (''Persero''), Cilatexindo Graha Alam P.T. (''Cilatexindo''). The questionnaire is divided into four sections. Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production (''COP'') of the foreign like product and constructed value (''CV'') of the subject merchandise.

On June 8, 1998 and July 27, 1998, Cilatexindo and Persero, respectively, stated that it has never directly or indirectly sold ERT to the U.S. market during the period of investigation. Upon receipt of Cilatexindo and Persero's statements, the Department consulted with U.S. Customs to verify each party's respective claim as it pertains to the period of investigation. The Department was able to confirm that both Cilatexindo and Persero did not ship the subject merchandise to the United States. (*See* Memorandum from Russell Morris to the File, ''Shipments of Subject Merchandise,'' dated August 24, 1998. The public version is on file in Room B–099, the Central Records Unit, of the Department of Commerce).

On July 8, 1998, Bakrie and Swasthi submitted their respective responses to Section A of the questionnaire. On July 21, 1998, Bakrie submitted Sections B and C of the questionnaire. On July 24, 1998, Swasthi submitted Sections B and C of the questionnaire. On August 17, 1998, we issued supplemental questionnaires to Bakrie and its affiliated U.S. reseller, Globe Manufacturing Co. (''Globe'') and Swasthi. On September 14, 1998, Swasthi submitted its response to the Department's Section C supplemental questionnaire. On September 25, 1998, Bakrie submitted its response to the Department's supplemental questionnaire for Sections A, B and C. On September 25, 1998, Bakrie also submitted its revised Section C questionnaire response which contained a separate submission of Globe's selling expenses and prices to its first unaffiliated customer.

On August 3, 1998, the petitioner made a timely request that the Department postpone the preliminary determination in this investigation. We did so on August 14, 1998, in accordance with section 733(c)(1)(A) of the Act (*see Notice of Postponement of Time Limit for Antidumping Investigation: Extruded Rubber Thread from Indonesia*, 63 FR 43674).

Date of Sale

On September 3, 1998, the petitioner objected to Swasthi's use of date of invoice as the date of sale. Petitioner argued that given the actual sales processes of Swasthi, the appropriate date of sale is set on the purchase order date for U.S. sales, not the date on which the sale is invoiced as Swasthi has reported. Petitioner noted that there are no changes in the basic terms of each sale after the negotiation of the purchase order. The petitioner noted

that its comment pertaining to the proper date of sale applies to Bakrie, as well. After a review of the petitioner's comments and the method by which sales are made in both the home market and U.S. market by both respondents, we determined that the date of invoice is the appropriate date of sale in this investigation.

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to the Final Rules (the ''Preamble'') provides an explanation of this policy and examples of when the Department may choose to base the date of sale on a date other than the date of invoice. *See* 62 FR at 27348–49 (May 19, 1997). According to Swasthi's response, the product mix, the price, and the quantity of a customer's original order can change until the date of shipment which is the same as the company's date of invoice. Based upon Swasthi's representation, we preliminarily determine that the appropriate date of sale for Swasthi is the date of shipment. In determining the date of sale for Bakrie and its affiliated reseller Globe, the Department is relying on Globe's reported invoice date as the date of sale and shipment date. (For further discussion see memorandum to the file, ''Clarification of Globe Manufacturing's Section C submission,'' dated October, 15, 1998.) We intend to verify respondents' claims concerning changes between the date of shipment and the date of invoice. Based upon the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider, among other things, whether, in fact, there were any changes to the contracted terms between the original order and the date of invoice. *See e.g. Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand*, 63 FR 7392 at 7394–7395 (February 13, 1998).

Cost Investigation

On August 17, 1998, pursuant to section 773(b) of the Act, petitioner submitted a timely allegation that Bakrie and Swasthi had made sales in the home market at less than the cost of production. Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Bakrie and Swasthi both sold ERT in the home market at prices at less than COP. Accordingly, we initiated COP investigations with respect to Bakrie and Swasthi pursuant to section 773(b) of the Act on September 10, 1998 (*see* Memorandum from Team to David Mueller, Office Director, dated September 10, 1998. The public version is on file in Room B–099 of the Central Records Unit). As a result of the Department's COP investigation, the Department requested that both Bakrie and Swasthi answer Section D of the original questionnaire; both parties submitted their respective responses to the Section D questionnaire on October 23, 1998. Because of the timing of the COP initiation and the receipt of the COP responses, we are unable to include a COP analysis in this preliminary determination. We intend to issue COP analysis memoranda for Bakrie and Swasthi prior to verification and will conduct cost verifications for both respondents. Parties should include comments, if any, on our COP methodology in their case briefs.

Scope of the Investigation

For purposes of this investigation, the product covered is ERT from Indonesia. ERT is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter.

ERT is currently classified under subheadings 4007.00.00 of the *Harmonized Tariff Schedule* (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Postponement of Final Determination and Extension of Provisional Measures

In October 1998, pursuant to section 735(a)(2) of the Act, both respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On October 27, 1998, respondents amended their request to include a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) both Bakrie and Swasthi account for a significant proportion of exports of the subject merchandise, (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. In addition, we are extending the provisional measures by not more than six months. Suspension of liquidation will be extended accordingly.

Fair Value Comparisons

To determine whether sales of ERT from Indonesia to the United States were made at less than fair value, we compared the export price (''EP'') or the constructed export price (''CEP'') to the normal value (''NV''), as described below in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of Investigation'' section of this notice, produced in Indonesia by the respondents and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): gauge, color, and ends. (For further explanation of the product comparisons, *see* Memorandum from Anne D'Alauro dated May 22, 1998, on file in the Central Records Unit, Room B–099 of the Department of Commerce.)

Level of Trade

While neither Swasthi nor Bakrie claimed a difference in level of trade, Bakrie requested that the Department evaluate whether Bakrie qualified for a level of trade adjustment. Based upon our review of the responses submitted by each of the companies, we detected no sales activities that would differ from the home market to U.S. market, and therefore determine that each company performed essentially the same selling activities for all reported home market and U.S. sales. Accordingly, we find that no level of trade differences exist between any sales in either the home

market or U.S. market for either company. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Act is unwarranted.

Export Price

For Swasthi, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise indicated. We based EP on the packed prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, from the starting price for foreign inland freight, international freight, marine insurance, U.S. customs duty, and brokerage and handling. We also made a deduction, where appropriate, for rebates.

Constructed Export Price

For Bakrie, we used CEP methodology, in accordance with section 772(b) of the Act, because the first sale of subject merchandise to an unaffiliated purchaser took place after importation into the United States. We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, containerization expenses (expenses for loading the merchandise into the container), foreign brokerage and handling, international freight (including marine insurance, U.S. inland insurance, U.S. freight to the affiliated reseller), U.S. customs duties, letter of credit fees, and freight to U.S. customer. In accordance with 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit cost and technical services), inventory carrying costs, and other indirect selling expenses. Bakrie did not make a profit during the POI, therefore, profit was not deducted in accordance with sections 772(d)(3) and 772(f) of the Act.

In its response, Bakrie converted certain expenses originally incurred in Rupiah into U.S. dollars using an average exchange rate for the POI which was reported in its response. Because the company should have reported the charges in the currency of the transactions, we reconverted these expenses back into Rupiah using the average exchange rate used by the company.

In addition, in its initial questionnaire response, Bakrie and Globe failed to submit to the Department a single integrated Section C response. On August 17, 1998, we sent a supplemental questionnaire to both Bakrie and Globe, requesting that they submit a revised Section C response that integrated Bakrie's transfers of ERT to Globe and Globe's sales of ERT to its first unaffiliated customer in the United States. On September 25, 1998, Bakrie submitted a revised Section C questionnaire response. However, Bakrie's revised Section C response did not integrate its movement and other expenses associated with its shipments of ERT to Globe with that of Globe's sales of ERT to its first unaffiliated customer. The lack of an integrated response created gaps for which we did not have data.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' In its August 17, 1998 supplemental questionnaire, the Department specifically requested that both Bakrie and its affiliated reseller, Globe, provide ''one integrated response.'' *See* the Department's Supplemental Questionnaire dated August 11, 1998, page 5. Both Bakrie and Globe failed to comply with the Department's request for an integrated response. On this basis, we determined that use of facts available is appropriate for certain expenses reported by Bakrie and Globe. The Department relied on facts available to integrate and adjust certain selling expenses incurred by both Bakrie and Globe. Therefore, as facts available, we weight-averaged Bakrie's reported U.S. expenses for CEP sales and integrated them into Globe's reported response. *See* Memorandum from Team to the File ''Normal Value and Constructed Export Price Adjustments for the Preliminary Determination,'' dated October 27, 1998.

In addition, according to Bakrie, Globe provided some technical services to its U.S. customers. However, Globe reported these expenses as part of its indirect selling expenses. Because we are unable to segregate these technical service expenses from other indirect selling expenses incurred in the United States as reported by Globe, we are treating, as facts available, the entire amount as direct selling expenses.

Normal Value

After testing for home market viability, we calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. As respondents' aggregate volume of home market sales of the foreign like product exceeded five percent of their aggregate volume of U.S. sales for the subject merchandise, we have determined that the home market is viable for both of the respondents.

Bakrie

We based NV on packed, delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for inland freight, inland insurance, and direct selling expenses (credit expenses and commissions), pursuant to sections 773(a)(6)(B) and 773(a)(6)(C)(iii) of the Act. We also made deductions, where appropriate, for discounts. In addition, pursuant to sections 773(a)(6) (A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

While Bakrie reported in its response that it sold identical products in both its home and U.S. markets, identical product sales were not made during the POI. Thus, we had to match U.S. products to the most similar product sold in the home market based upon the matching criteria noted in the ''Physical Characteristics'' section of this notice. Bakrie, however, failed to provide information which could be used to make adjustments for physical differences in merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. Therefore, we compared Bakrie's sales in the U.S. market to sales in the home market of products at the next highest gauge, as facts available, because the prices and costs per unit of weight are higher for the higher gauged ERT products.

Swasthi

We based NV on packed, delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for inland freight in accordance with section 773(a)(6)(B)(ii) of the Act. We also adjusted for differences in circumstances of sale for credit expenses pursuant to section 773(a)(6)(C)(iii) of the Act. In addition, pursuant to sections 773(a)(6) (A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Swasthi reported that it had returns of subject merchandise during the POI. On certain specific home market sales, it reported the quantity of the merchandise returned by the customer. Swasthi did not, however, report any additional expenses it incurred as a result of the return of defected and rejected merchandise. Therefore, we were unable to make any adjustments for any expenses incurred under this claim. We did, however, adjust the reported quantity of the home market sale based upon the quantity of the merchandise returned by the customer.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773(A) of the Act.

In the recently completed preliminary determination of *Mushrooms from Indonesia,* an issue was raised regarding the use of two averaging periods for the margin calculations to account for the effect of the devaluation of the Indonesian Rupiah. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms From Indonesia,* 63 FR 41783 (August 5, 1998) (*Mushrooms from Indonesia*). The petitioners in *Mushrooms from Indonesia* stated that the Department should calculate the weighted-average export price for two averaging periods—January through June 1997, and July through December 1997—in order to avoid distorting dumping margins. In *Mushrooms from Indonesia,* we preliminarily found no basis to depart from our practice of calculating the weighted-average export prices for the entire POI. Although the issue of using two different averaging periods has not been raised in the instant investigation, the effect, if any, of the devaluation of the Rupiah on margin calculations could also be relevant to this investigation because its POI, calendar year 1997, is identical to that in *Mushrooms from Indonesia.* Therefore, we will continue to examine this issue for our final determination in this instant investigation. We invite comments from the interested parties on this issue.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Swasthi is excluded from suspension of liquidation because its rate is *de minimis* under section 733(b)(3) of the Act. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export or constructed export price, as indicated in the chart below for companies other than Swasthi. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin Percentage
Bakrie Rubber Industry	13.07
P.T. Swasthi Parama Mulya	0.09
All Others Rate	13.07

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded all zero and *de minimis* weighted-average dumping margins from the calculation of the ''All Others'' rate. Under section 733(b)(3) of the Act, a weighted-average dumping margin is *de minimis* if it is less than two percent *ad valorem*.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 3, 1999, and rebuttal briefs no later than February 10, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 16, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistance Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29441 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Louisiana State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and

Constitution Avenue, NW, Washington, DC.

Docket Number: 98–042. *Applicant:* Louisiana State University, Baton Rouge, LA 70806. *Instrument:* Scanning Tunneling Microscope. Manufacturer: Scideco I/S, Denmark. *Intended Use:* See notice at 63 FR 44841, August 21, 1998. *Advice received from:* National Institute of Standards and Technology, October 2, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) resolution of 0.01 nm in the vertical and 0.1 nm lateral at all temperatures, (2) operation from 120 °K to 400 °K and (3) internal spring suspension. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–29442 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–050. *Applicant:* University of Maryland, Baltimore, Department of Anatomy and Neurobiology, 685 W. Baltimore Street, Room 222, Baltimore, MD 21201. *Instrument:* Visual Stimulator, Model Leonardo. *Manufacturer:* Lohmann Research Equipment, Germany. *Intended Use:* The instrument will be used to provide visual stimulation during experiments on the processing of visual information in ferrets. In addition, the instrument will be used in rotation courses for graduate students preparing for thesis work. *Application accepted by Commissioner of Customs:* October 9, 1998.

Docket Number: 98–051. *Applicant:* University of Maryland, Baltimore, Department of Anatomy and Neurobiology, 685 W. Baltimore Street, Room 222, Baltimore, MD 21201. *Instrument:* Data Acquisition and Analysis Workstation, Model ORA 2001. *Manufacturer:* Optical Imaging Europe GmbH. *Intended Use:* The instrument will be used to provide visual stimulation during experiments on the processing of visual information in ferrets. In addition, the instrument will be used in rotation courses for graduate students preparing for thesis work. *Application accepted by Commissioner of Customs:* October 15, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–29443 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102798B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Mississippi/Louisiana Habitat Protection Advisory Panel (AP).

DATES: The meeting will begin at 9:00 a.m. on Tuesday, November 17, 1998 and conclude by 3:00 p.m.

ADDRESSES: The meetings will be held at the Crowne Plaza New Orleans, 333 Poydras Street, New Orleans, LA 70130; telephone: 504–525–9444.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Gulf States Marine Fisheries Commission; telephone: 228–875–5912.

SUPPLEMENTARY INFORMATION: The Louisiana/Mississippi group is part of a three unit Habitat Protection AP of the Council. The principal role of the APs is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. APs serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The APs may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will tentatively discuss updates on the Caminada Cove project, the navigation canal between the Gulf Intercoastal Waterway and the Barataria Bay Waterway, port activity around Port Fourchon, LA, the Eden Isles project, the Big Island Restoration Project, and a presentation on the Destination Broadwater Casino project.

Although other issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The AP's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 10, 1998.

Dated: October 28, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29429 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102798D]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder Monitoring Committee, Scup Monitoring Committee, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, November 19, 1998, beginning at 9:00 a.m. with the Summer Flounder Monitoring Committee, followed by the Black Sea Bass Monitoring Committee and the Scup Monitoring Committee.

ADDRESSES: The meeting will be held at the Comfort Inn - Airport Complex, 6921 Baltimore Annapolis Blvd., Baltimore, MD, telephone: 410–789–9100.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 1999 recreational management measures for summer flounder, black sea bass, and scup.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 28, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29428 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102798C]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Committee, together with the Industry Advisors, will hold a public meeting.

DATES: The meeting will be held on Tuesday, November 17, 1998 from 10:00 a.m. until 5:00 p.m., and Wednesday, November 18, 1998 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, 76 Industrial Highway, Essington, PA; telephone: 610–521–9600.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss and make recommendations on: Limits on the size of mackerel processing vessels, exemptions from the vessel size limit for mackerel harvesting vessels, upgrades on mackerel vessel size, overfishing definitions for squids, and in season adjustment of annual specifications for squid, mackerel, and butterfish.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 28, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29430 Filed 11–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services Fiscal Year 1999

ACTION: Notice.

SUMMARY: Notice is hereby given that the Deputy Chief Financial Officer in a memorandum dated September 29, 1998 established the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 1999. These rates are effective October 1, 1998.

Medical and Dental Services: Fiscal Year 1999

The FY 1999 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, Section 1095. Due to size, the sections containing the Drug Reimbursement Rates (Section III.E) and the rates for Ancillary Services Requested by Outside Providers (Section III.F) are not included in this package. The Office of the Assistant Secretary of Defense (Health Affairs) will provide these rates upon request (MAJ Rose Layman, OASD(HA)—Response Management/Tri-Care Management Activity, (703) 681–8912 or DSN 761–8912). The medical and dental service rates in this package (including the rates for ancillary services, prescription drugs or other procedures requested by outside providers) are effective October 1, 1998.

I. Inpatient Rates [1 2]

INPATIENT, OUTPATIENT AND OTHER RATES AND CHARGES

Per inpatient day	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$2,538.00	$4,632.00	$4,952.00
B. Surgical Care Services	1,236.00	2,255.00	2,411.00
(Cosmetic Surgery)			
C. All Other Inpatient Services			
(Based on Diagnosis Related Groups (DRG) [3])			

1. FY99 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,429.00	$4,552.00	$4,825.00
Other Urban/Rural	2,642.00	5,413.00	5,760.00
Overseas	2,989.00	6,823.00	7,234.00

2. Overview

The FY 1999 inpatient rates are based on the cost per Diagnosis Related Groups (DRG), which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary, diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient Adjusted Standardized Amount (ASA) (see paragraph I.C.1. above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the nonteaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.9769. (DRG statistics shown are from FY 1997).

c. The DoD adjusted standardized amount to be charged is $4,825 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a nonteaching hospital with area wage index of 1.0 is the RWP factor (2.9769) in 3.b., above, multiplied by the amount ($4,825) in 3.c., above.

e. Cost to be recovered is $14,364.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
010	Nervous System Infection Except Viral Meningitis	2.9769	11.2	7.8	1	30

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	Applied ASA
Nonteaching Hospital	Large Urban	1.0	1.0	$4,825.00	4,825.00

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.9769	0.0000	2.9769	$14,364
#2	21 days	0	2.9769	0.0000	2.9769	14,364
#3	35 days	5	2.9769	0.6297	3.6066	17,402

* DRG Weight.

** Outlier calculation = 33 percent of per diem weight × number of outlier days.
= .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold).
= .33 (2.9769/7.8) × 35 − 30).
= .33 (.38165 × 5 (take out to five decimal places).
= .12594 × 5 (take out to five decimal places).
= .6297 (take out to four decimal places).

*** Applied ASA × Total RWP.

II. Outpatient Rates [1] [2] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	A. Medical Care			
BAA	Internal Medicine	$104.00	$186.00	$198.00
BAB	Allergy	48.00	86.00	92.00
BAC	Cardiology	78.00	140.00	149.00
BAE	Diabetic	57.00	102.00	108.00
BAF	Endocrinology (Metabolism)	90.00	162.00	173.00
BAG	Gastroenterology	114.00	205.00	219.00
BAH	Hematology	145.00	260.00	277.00
BAI	Hypertension	89.00	160.00	170.00
BAJ	Nephrology	138.00	245.00	261.00
BAK	Neurology	112.00	200.00	213.00
BAL	Outpatient Nutrition	33.00	59.00	63.00
BAM	Oncology	132.00	236.00	251.00
BAN	Pulmonary Disease	118.00	211.00	225.00
BAO	Rheumatology	84.00	151.00	160.00
BAP	Dermatology	68.00	122.00	130.00
BAQ	Infectious Disease	126.00	225.00	240.00
BAR	Physical Medicine	74.00	133.00	142.00
BAS	Radiation Therapy	91.00	164.00	174.00
	B. Surgical Care			
BBA	General Surgery	164.00	295.00	314.00
BBB	Cardiovascular and Thoracic Surgery	132.00	237.00	252.00
BBC	Neurosurgery	188.00	337.00	359.00
BBD	Ophthalmology	102.00	183.00	194.00
BBE	Organ Transplant	239.00	429.00	457.00
BBF	Otolaryngology	124.00	222.00	237.00
BBG	Plastic Surgery	129.00	231.00	247.00
BBH	Proctology	65.00	117.00	124.00
BBI	Urology	125.00	224.00	239.00
BBJ	Pediatric Surgery	91.00	163.00	174.00
	C. Obstetrical and Gynecological (OB–GYN) Care			
BCA	Family Planning	45.00	81.00	87.00
BCB	Gynecology	101.00	181.00	193.00
BCC	Obstetrics	72.00	129.00	137.00
BCD	Breast Cancer Clinic	171.00	307.00	327.00
	D. Pediatric Care			
BDA	Pediatric	63.00	113.00	120.00
BDB	Adolescent	60.00	108.00	115.00
BDC	Well Baby	40.00	71.00	75.00
	E. Orthopaedic Care			
BEA	Orthopaedic	118.00	212.00	226.00
BEB	Cast	50.00	90.00	96.00
BEC	Hand Surgery	61.00	109.00	116.00
BEE	Orthotic Laboratory	60.00	108.00	115.00
BEF	Podiatry	67.00	119.00	127.00
BEZ	Chiropractic	24.00	42.00	45.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	97.00	174.00	186.00
BFB	Psychology	79.00	141.00	150.00
BFC	Child Guidance	52.00	93.00	99.00
BFD	Mental Health	105.00	188.00	201.00
BFE	Social Work	77.00	137.00	146.00
BFF	Substance Abuse	82.00	147.00	156.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	74.00	133.00	141.00

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
BHA	Primary Care	75.00	134.00	143.00
BHB	Medical Examination	66.00	118.00	126.00
BHC	Optometry	48.00	86.00	91.00
BHD	Audiology	27.00	49.00	52.00
BHE	Speech Pathology	69.00	123.00	131.00
BHF	Community Health	48.00	87.00	92.00
BHG	Occupational Health	78.00	141.00	150.00
BHH	TRICARE Outpatient	44.00	79.00	84.00
BHI	Immediate Care	108.00	193.00	206.00
	H. Emergency Medical Care			
BIA	Emergency Medical	114.00	205.00	218.00
	I. Flight Medical Care			
BJA	Flight Medicine	103.00	185.00	197.00
	J. Underseas Medical Care			
BKA	Underseas Medicine	35.00	63.00	67.00
	K. Rehabilitative Services			
BLA	Physical Therapy	34.00	60.00	64.00
BLB	Occupational Therapy	48.00	86.00	91.00

III. Other Rates and Charges [1,2] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
FBI	A. *Immunization*	$13.00	$22.00	$24.00
DGC	B. *Hyperbaric Chamber* [5]	191.00	343.00	366.00
	C. *Ambulatory Procedure Visit* (*APV*) [6]	926.00	1,657.00	1,765.00
	D. *Family Member Rate* (formerly Military Dependents Rate)	10.45	.....	.....

E. Reimbursement Rates for Drugs Requested By Outside Providers [7]

The FY 1999 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided. Final rule 32 CFR part 200 eliminates the high cost ancillary services' dollar threshold and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR Part 220. The list of drug reimbursement rates is too large to include here. These rates are available on request from OASD (Health Affairs)—MAJ Rose Layman, OASD(HA)-Resource Management/Tri-Care Management Activity, (703) 681–8912 or DSN 761–8912.

F. Reimbursement Rates for Ancillary Services Requested By Outside Providers [8]

Final rule 32 CFR part 220 eliminates the high cost ancillary services' dollar threshold and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR part 220.

The list of FY 1999 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include here. These rates are available on request from OASD(Health Affairs)—MAJ Rose Layman, OASD(HA)-Resource Management/Tri-Care Management Activity, (703) 681–8912 or DSN 761–8912.

G. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [9]	FY 1999 charge [10]	Amount of charge
Mammaplasty	85.50 85.32 85.31	19325 19324 19318	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [9]	FY 1999 charge [10]	Amount of charge
Facial Rhytidectomy	86.82 86.22	15824	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Blepharoplasty	08.70 08.44	15820 15821 15822 15823	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mentoplasty (Augmentation/Reduction).	76.68 76.67	21208 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Lipectomy suction per region [11]	86.83	15876 15877 15878 15879	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87 21.86	30400 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Minor Skin Lesions [12]	86.30	1578__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Chemical Peel	86.24	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Arm/Thigh Dermolipectomy	86.83	1583__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)

H. Dental Rate [13] Per Procedure

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	Dental Services ADA Code and DoD established weight	$56.00	$101.00	$108.00

I. Ambulance Rage [14] Per Visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
FEA	Ambulance	$56.00	$101.00	$107.00

J. Ancillary Services Requested by an Outside Provider [8] Per Procedure

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	Laboratory procedures requested by an outside provider CPT '98 Weight Multiplier.	$10.00	$17.00	$18.00
	Radiology procedures requested by an outside provider CPT '98 Weight Multiplier.	25.00	45.00	48.00
	Cardiology procedures requested by an outside provider CPT '98 Weight Multiplier.	17.00	31.00	33.00

K. AirEvac Rate [15] Per visit

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	AirEvac Services—Ambulatory	$90.00	$161.00	$172.00
	AirEvac Services—Litter	256.00	459.00	489.00

L. Observation Rate [16] Per hour

MEPRS code [4]	Clinical service	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other (full/third party)
	Observation Services—Hour	$14.50	$25.83	$27.50

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in Section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in Section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in Sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 96 percent hospital and 4 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the sub account within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

	MEPRS code
Outpatient Care (Functional Category)	B
Medical Care (Summary Account)	BA
Internal Medicine (Subaccount)	BAA

[5] Hyperbaric services charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[6] Ambulatory procedure visit is defined in DOD Instruction 6025.8, ''Ambulatory Procedure Visit (APV),'' dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). Care is required in the facility for less than 24 hours. This rate is also used for elective cosmetic surgery performed in an APU.

[7] Prescription services requested by outside providers (e.g., physicians or dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Service Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (e.g., tablets or capsules) by the unit cost and adding a $5.00 dispensing fee per prescription. Final rule 32 CFR part 220 eliminates the high cost ancillary services' dollar threshold and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR part 220.

[8] Charges for ancillary services requested by an outside provider (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical

insurance obtain services from the MTF that are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD established weight for the Physicians' Current Procedural Terminology (CPT) '98) code by either the cardiology, laboratory or radiology multiplier (Section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost an shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for ancillary services. Final rule 32 CFR part 220 eliminates the high cost ancillary services' dollar threshold and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR part 220.

[9] The attending physician is to complete the CPT '98 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in Section III.G. The patient shall be charged the rate as specified in the FY 1999 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient per diem surgical care services in Section I.B., ambulatory procedure visits as contained in Section III.C, or the appropriate outpatient clinic rate in Sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[11] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12] These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges shall be for the entire treatment, regardless of the number of visits required.

[13] Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[14] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[15] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC).

[16] Observation Services are billed at either the hourly or daily charge. Begin counting when the patient is placed in the observation bed, and round to the nearest hour. The daily rate for full/third party, for example, would be $660 based on 24 hours of service. If a patient status changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not billed separately. If a patient is released from Observation status and is sent to an APV, the charges for Observation services are not billed separately, but are added to the APV rate in order to recover all expenses.

Dated: October 27, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29314 Filed 11–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE/CHAMPUS; FY99 DRG Updates

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE/CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS). It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amounts, DRG relative weights, and beneficiary cost-share per diem rates to be used for FY 1999 under the TRICARE/CHAMPUS DRG-based payment system.

EFFECTIVE DATES: The rates, weights and Medicare PPS changes which affect the TRICARE/CHAMPUS DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 1998.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9403.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238. The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627. To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the TRICARE/CHAMPUS DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE/CHAMPUS, is that the TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE/CHAMPUS system will follow the same rules that apply to the Medicare PPS. HCFA publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE/CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS that affect the TRICARE/CHAMPUS DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE/CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE/CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE/CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 DRGs and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. Grouping for all other DRGs under the TRICARE/CHAMPUS system is identical to the Medicare PPS.

For FY 1999, HCFA will implement a number of classification changes, including surgical hierarchy changes, revisions to the Major Problem Diagnosis List, and refinements to the Complications and Comorbidities (CC) List. The CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE/CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS. In addition, TRICARE/CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

TRICARE/CHAMPUS will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to HCFA's July 31, 1998, final rule.

D. Outlier Payments

Since TRICARE/CHAMPUS does not include capital payments in our DRG-based payments, we will use the fixed loss cost outlier threshold calculated by HCFA for paying cost outliers in the absence of capital prospective payments. For FY99, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY99, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE/CHAMPUS DRG base payment rate for the DRG plus the IDME payment plus $10,129 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

E. Graduate Medical Education

TRICARE/CHAMPUS will adopt Medicare's PPS changes as they pertain to the counting and reporting of residents on the Medicare cost reports for purposes of reimbursing hospitals for the TRICARE/CHAMPUS share of graduate medical education costs.

F. Transfers

TRICARE/CHAMPUS will adopt Medicare's PPS changes as they pertain to the expanded transfer definition. We will publish an interim final rule to reflect these changes in 32 CFR Part 199(a)(1).

G. Blood Clotting Factor

TRICARE/CHAMPUS will adopt the two new HCPCS billing codes and payment rates for purified Factor IX products, as outlined in HCFA's May 12, 1998, final rule. These new codes and payment rates are effective for admissions on or after June 11, 1998. In addition, we will adopt the changes to the payment rates for blood clotting factor for hemophilia patients as outlined in HCFA's July 31, 1998, final rule, effective for admissions on or after October 1, 1998.

H. Bad Debt Increase

TRICARE/CHAMPUS will adopt Medicare's PPS changes to gradually reduce the payment for bad debt for hospitals over the next several years.

II. Cost to Charge Ratio

For FY 1999, the cost-to-charge ratio used for the TRICARE/CHAMPUS DRG-based payment system will be 0.5487, which is increased to 0.5562 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.6085.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *http://www.tso.osd.mil* under the heading Provider Reimbursement Rates. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE/CHAMPUS DRG-based payment system during FY 1999 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR Part 199.

Dated: October 27, 1998.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29315 Filed 11–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Termination of Environmental Impact Statements on Three Navy Actions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy had previously announced its intent to prepare Environmental Impact Statements for three actions, however, after beginning the NEPA process, Navy determined that the actions would not result in significant impacts to the human environment. Navy's intent to prepare Environmental Impact Statements is hereby withdrawn for the following actions: disposal and privatization of Naval Air Warfare Center Indianapolis, Indiana; disposal and reuse of Naval Surface Warfare Center Louisville, Kentucky, and; disposal and reuse of Naval Radio Transmitter Facility Driver, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Hess, Office of Chief of Naval Operations (Code N456F) at telephone (703) 604–5421, fax (703) 602–4642, or e-mail to hessm@n4.opnav.navy.mil.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of

1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy published in the **Federal Register**, Notices of Intent to prepare Environmental Impact Statements for the following actions: disposal and privatization of NAWC Indianapolis, Indiana, published on April 15, 1996; disposal and reuse of Naval Surface Warfare Center Louisville, Kentucky, published on June 3, 1996; disposal and reuse of Naval Radio Transmitter Facility Driver, Virginia, published on February 17, 1994.

During the NEPA analysis, it was determined that there were no significant impacts from these actions, therefore the appropriate documentation was prepared. This notice announces to the public that these Environmental Impact Statements were terminated.

Copies of the NEPA document for these actions may be requested from the Navy contact listed above.

Dated: October 26, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–29462 Filed 11–2–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Wetlands and Floodplain Involvement for Siting, Construction, and Operation of the Spallation Neutron Source

AGENCY: U.S. Department of Energy.

ACTION: Notice of Wetland and Floodplain Involvement.

SUMMARY: The U.S. Department of Energy (DOE) proposes to site, construct, and operate a Spallation Neutron Source (SNS). The proposed SNS facility would consist of a proton accelerator system; a spallation target; and appropriate experimental areas, laboratories, offices, and support facilities to allow ongoing and expanded programs of neutron research. DOE has identified four alternative sites for this project: Oak Ridge National Laboratory, Oak Ridge, Tennessee (the preferred alternative); Argonne National Laboratory, Argonne, Illinois; Los Alamos National Laboratory, Los Alamos, New Mexico; and Brookhaven National Laboratory, Upton, New York.

The proposed sites at ORNL and ANL include small wetlands. In addition, a portion of the site at ANL lies within a 100-year floodplain. In accordance with DOE regulations for floodplain and wetlands environmental review (10 CFR part 1022), DOE will prepare a wetland/floodplain assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected wetlands and floodplain. This assessment will address potential mitigation measures and practicable siting alternatives and will be included in the EIS. The Statement of Findings will be incorporated in the Final EIS.

DATES: Within the next few months, a Draft Environmental Impact Statement (DEIS) for the Spallation Neutron Source will be issued for public comment for a period of at least 45 days. Comments in response to this Notice may be submitted to the address below at any time through the end of the DEIS public comment period.

ADDRESSES: Please direct comments to: David K. Wilfert, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, 146/FEDC, Oak Ridge, Tennessee 37831, telephone: (800) 927–9964, facsimile: (423) 576–4542, or e-mail NSNSEIS@ornl.gov.

For general NEPA information, please contact Carol Borgstrom, U.S. Department of Energy, Office of NEPA Policy and Assistance, 1000 Independence Avenue, SW, Washington, DC 20585, telephone: (202) 586–4600.

FOR FURTHER INFORMATION CONTACT: For general information associated with the Spallation Neutron Source, please contact: Jeffrey C. Hoy, SNS Program Manager, Office of Basic Energy Sciences, Office of Energy Research, U.S. Department of Energy, ER–13, Germantown, MD 20874–1290, telephone: (301) 903–4924. Further information on this proposed action and wetlands assessment can be obtained from David K. Wilfert at the above address.

SUPPLEMENTARY INFORMATION: The proposed SNS facility would consist of a proton accelerator system, a spallation source to produce neutron pulses, and appropriate experimental areas, laboratories, offices, and support facilities to allow ongoing and expanded programs of neutron research. DOE proposes to construct and operate the SNS at one of four alternative sites in the United States. The preferred alternative being evaluated in the EIS is to construct the SNS at the Oak Ridge National Laboratory (ORNL), Oak Ridge, Tennessee. Other alternative locations for the SNS included in the EIS are Argonne National Laboratory (ANL), Argonne, Illinois; Los Alamos National Laboratory (LANL), Los Alamos, New Mexico; and Brookhaven National Laboratory (BNL), Upton, New York.

Construction of the SNS at the proposed ORNL site would involve the taking of two small palustrine emergent wetlands on the Chestnut Ridge construction site. These two wetlands have a combined area of 0.05 hectares (0.12 acres). One of these small wetlands is an emergent wetland in an isolated depression. It is adjacent to another small wetland that lies immediately adjacent to Chestnut Ridge Road near where it crosses White Oak Creek. The depression does not appear to have a surface outlet to the swale or to nearby White Oak Creek. Upgrades needed to Chestnut Ridge Road and the laying of a gas pipeline would encroach on these areas and result in the loss of the 0.05 hectares of wetlands. A third wetland with an area of 0.65 hectares (1.6 acres) could receive increased runoff and siltation during construction activities. Appropriate runoff mitigation measures would be employed to minimize any effects to this wetland.

As proposed, construction of the SNS at the ANL alternative site would involve the loss of a 1.4 hectares (3.5 acres) of palustrine emergent wetlands that would lie within the proposed SNS facility footprint at ANL. In accordance with Section 404 of the Federal Clean Water Act, a permit from the U.S. Army Corps of Engineers would be sought for construction in these wetlands and for possible plans to mitigate the losses as necessary, should the SNS be built at the ANL site.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. The assessment and a floodplain statement of findings will be included in the environmental impact statement being prepared for the proposed project in accordance with the National Environmental Policy Act.

Issued in Washington, DC, this 22d day of October, 1998.

Martha A. Krebs,

Director, Office of Energy Research.

[FR Doc. 98–29438 Filed 11–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–31–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 28, 1998.

Take notice that on October 21, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP99–31–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to Beaver Hollow Conference Center in Wyoming County, New York, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate delivery point facilities, consisting of a 2-inch tap meter and filter separator, on its Line 10248 in Wyoming County, New York, for interruptible Part 284 transportation service to Beaver Hollow for commercial end-use. It is stated that the facilities will be used to deliver approximately 20 dt equivalent of natural gas per day and 7,300 dt equivalent on a annual basis to Beaver Hollow.

It is asserted that the facilities are being installed in response to a request from Beaver Hollow. It is further asserted that Columbia will be reimbursed for the $12,373 cost of the facilities (including tax gross up) by Beaver Hollow. It is explained that the value of gas delivered to Beaver Hollow will be within certificated entitlement and that the proposal will not have any impact on Columbia's existing design day and annual obligations to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29350 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–97–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1998.

Take notice that on October 23, 1998, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective January 1, 1999:

Sixth Revised Sheet No. 29

El Paso states that the tendered tariff sheet revises the fuel charges applicable to transportation service on El Paso's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29358 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–12–001]

Gulf States Transmission Corporation; Notice of Filing

October 28, 1998.

Take notice that on October 21, 1998, Gulf States Transmission Corporation (Gulf States) submitted revised standards of conduct in response to the Commission's September 24, 1998 Order on Standards of Conduct. 84 FERC ¶ 61,311 (1998).

Gulf States states that it has served copies of the filing upon all of its affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29352 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–96–000]

Kern River Gas Transmission Company: Notice of Tariff Filing

October 28, 1998.

Take notice that on October 23, 1998, Kern River Gas Transmission Company (Kern River) tendered as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets for filing, to become effective December 1, 1998:

Third Revised Sheet No. 11
Second Revised Sheet No. 13
Third Revised Sheet No. 51
Second Revised Sheet No. 53
First Revised Sheet No. 54
Third Revised Sheet No. 96

Third Revised Sheet No. 97
Third Revised Sheet No. 98
Second Revised Sheet No. 140

Kern River states that the purpose of this filing is to submit tariff sheets (1) to streamline its administrative processes for Rate Schedules KRF–1 and KRI–1, (2) to clarify the bumping provision in Section 13.2(b) of its General Terms and Conditions, (3) to eliminate unnecessary language in the curtailment procedures in Section 13.3(a)(iii) of its General Terms and Conditions, and (4) to specify that available pools and related receipt points will be listed on Kern River's EBB and designated site instead of in its tariff, and that changes to the number of composition of such pools will be reflected on the EBB and designated site at least 10 days prior to such changes being implemented.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29357 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–247–000]

Midcoast Interstate Transmission, Inc.; Notice of Site Visit

October 28, 1998.

On November 5 and 6, 1998, the Office of Pipeline Regulation (OPR) staff will conduct a site visit, with representatives of Midcoast Interstate Transmission, Inc., of construction activities in Colbert County, Alabama.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29362 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–001]

Mississippi River Transmission Corporation; Notice of Tariff Filing

October 28, 1998.

Take notice that on September 16, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of the General Terms and Conditions to FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets. On October 14, 1998, 85 FERC ¶ 61,049, the FERC accepted such revised tariff sheets subject to MRT's filing, within ten (10) days of the Order's issuance, revised tariff sheets in compliance with the terms of the October 14, 1998 order with an effective date of March 17, 1999 or earlier, subject to the technical conference to be convened in this proceeding.

MRT states that the following revised tariff sheets are filed in compliance with the October 14, 1998 order, and without waiving MRT's right to request clarification and/or rehearing of the issues raised in the October 14, 1998 order:

Substitute Original Sheet No. 99–A
Substitute Original Sheet No. 99–B
Substitute Original Sheet No. 99–C
Substitute Original Sheet No. 99–D
Substitute Original Sheet No. 99–E

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29356 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–003]

Northern Natural Gas Company; Notice of Filing of Revised Rates and Motion To Place Suspended Rates, as Revised, and Suspended Tariff Sheets Into Effect

October 28, 1998.

Take notice that on October 23, 1998, Northern Natural Gas Company tendered for filing as part of its FERC Gas Tariff certain rate tariff sheets identified on Attachment A to the filing. Northern has moved that such rates and tariff sheets be placed in effect on November 1, 1998.

Northern states that copies of its filing have been mailed to all of Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29355 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–59–003]

Northern Natural Gas Company; Notice of Compliance Filing

October 28, 1998.

Take notice that on October 23, 1998 Northern Natural Gas Company

(Northern), tendered for filing to become part of Northern FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on November 1, 1998 in compliance with the Commission's Order on Compliance Filing dated October 21, 1998:

Ninth Revised Sheet No. 54
Eighth Revised Sheet No. 61
Eighth Revised Sheet No. 62
Eighth Revised Sheet No. 63
Eighth Revised Sheet No. 64

Northern states that copies of the filing were serve upon Northern's customers and interested State Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29359 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–25–000]

Petal Gas Storage Company; Notice of Application

October 28, 1998.

Take notice that on October 20, 1998, Petal Gas Storage Company (Petal), 229 Milam Street, Shreveport, Louisiana, 71101, filed in Docket No. CP99–25–000 an application pursuant to Section 7 of the Natural Gas Act for authorization to construct and operate a second underground, salt dome cavern in Mississippi for the storage of natural gas and to construct and operate related facilities necessary to provide firm and interruptible gas storage service to others, on a self-implementing basis with pre-granted abandonment authorization and at market based rates.

It is stated that Petal, a wholly-owned subsidiary of Crystal Oil Company, was authorized on August 4, 1993, in Docket No. CP93–69–000 to construct and operate facilities related to a first storage cavern in Forrest County, Mississippi. Petal states that it is proposing to construct a second storage cavern. Petal also states that the second cavern represents the initial phase of a long-term planned expansion of Petal's services. It is stated that Phase I, the focus of the subject filing, is limited in scope, in that, Petal requests authorization to drill one well, leach a salt storage cavern with a storage capacity of 5.2 Bcf and install 825 feet of flow lines. Petal states that it does not intend to use the power of eminent domain. Petal further states all construction activity, except for 412 feet of flow lines on an easement to be acquired by Petal from Dynegy Midstream Services Limited Partnership, will take place on a 10.89 acre tract that was subject to environmental review in Docket No. CP93–69–000 and that Petal owns in fee.

Petal states that Phase II of the expansion project is still in the planning process; however, it is anticipated that Phase II will involve the construction of additional pipeline facilities in order to facilitate bi-directional interconnects with Transcontinental Gas Pipe Line Corporation, Southern Natural Gas Company, Destin Pipeline Company, L.L.C., the Koch Gateway Pipeline Company (Koch Gateway) high pressure system, and Florida Gas Transmission Corporation, which, in tandem with Petal's current interconnections with Tennessee Gas Pipeline Company and the Koch Gateway low pressure system, will provide added flexibility and enable Petal to access new markets. Petal states that if it does not pursue the Phase II project in conjunction with the development of the second storage cavern, it will operate both the first and second storage caverns as a single storage facility for the benefit of both existing and new customers.

Petal states that it has entered into a precedent agreement for firm storage service which covers at least 31 percent of the storage capacity available from the second cavern. In addition, Petal states that all available capacity in the first cavern is fully utilized. Further, Petal states that the existing contract commitments for service from the first storage cavern and the precedent agreement cover 62 percent of the storage capacity from the first and second caverns. Petal states that since it plans to operate the two caverns as a single storage facility, customers will have access to capacity in both storage caverns up to the total quantity reflected in their contracts.

It is stated that upon completion of the second cavern, the two storage caverns will be capable of a combined average daily injection rate of 160,000 Mcf per day, allowing customers to fill the working gas capacity in as little as 40 days, and an average combined daily withdrawal rate of 640,000 Mcf per day, allowing customers to completely withdraw gas in 10 days.

Petal proposes to offer its storage services at market-based rates. No cost data or revenue projections were submitted with this proceeding because Petal is requesting a waiver of those Commission Regulations requiring said submission.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 9, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process.

Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Petal to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29349 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169, TN]

Tapoco, Inc.; Notice of Tapoco, Inc.'s Request to Use Alternative Procedures in Preparing a License Application

October 28, 1998.

On October 1, 1998, the existing licensee, Tapoco, Inc. (Tapoco), filed a request to use alternative procedures for submitting an application for new license for the existing Tapoco Project No. 2169.[1] Tapoco has demonstrated that they have made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite comments on GPC's request to use the alternative procedure, pursuant to Section 4.34(i) of the Commission's regulations.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an environmental document (NEPA document) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on GPC's proposal to use the alternative procedure to prepare an application to relicense the Middle Chattahoochee Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Tapoco Project, No. 2169).

For further information, please contact Ronald McKitrick of the Federal Energy Regulatory Commission at 770–452–2363 ext. 44 or E-mail at ronald.mckitrick@FERC.Fed.US.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29353 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

[1] The 326.5-megawatt Tapoco (originally known as the Tallasee project) project is located on the Little Tennessee and its tributary, the Cheoah River, in Blount and Monroe Counties, Tennessee, and Graham and Swain Counties, North Carolina. The project consists of four developments, Chilhowee, Cheoah, Santeetlah, and Calderwood.

[2] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–32–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

October 28, 1998.

Take notice that on October 21, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–32–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place by sale to Missouri Gas Energy, a division of Southern Union Company (MGE), approximately 1.05 miles of the Alba and the Purcell 3-inch lateral pipelines and appurtenant facilities located in Jasper County, Missouri, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Williams seeks authorization to abandon in place by sale to MGE approximately 0.9 miles of the Alba 3-inch lateral pipeline (Line FN–5) and approximately 0.15 miles of the Purcell 3-inch lateral pipeline (Line FN–18) all located in Sections 16 & 17, Township 29 North, Range 32 West, Jasper County, Missouri, including without limitation, all gas lines, meters, records and other equipment, personal property, and fixtures located thereon and/or used in conjunction with the operation of the pipelines. Williams states that the Alba 3-inch lateral pipeline was originally installed in 1939 and Purcell 3-inch lateral pipeline was originally installed in 1939. Williams states that MGE will incorporate the pipelines into its existing distribution system. Williams states the sales price for these lateral lines is $10.

Williams states that the proposed lateral pipelines are downstream of its existing metering and regulating facilities and, therefore, no changes are being proposed to Williams' metering facilities serving the Alba and Purcell

areas or in the capacity of Williams' facilities serving these areas. Williams states that there will be no change in volumes delivered as a result of its proposal.

Williams states that in the agreement to assign and transfer the pipeline facilities, MGE agrees to accept and provide service to all domestic customers currently receiving gas from the pipelines to be abandoned.

Williams states that inasmuch as this is a request to abandon lateral pipeline facilities in place by sale to a local distribution company, such change is not prohibited by an existing tariff, and that Williams has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29351 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–9–000]

Williston Basin Interstate Pipeline Company; Notice of Application

October 28, 1998.

Take notice that on October 8, 1998, as supplemented on October 19, 1998, Williston Basin Interstate Pipeline Company, (Williston Basin) 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–9–000. an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the abandonment by removal of four meter stations and appurtenant facilities in North Dakota, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston Basin reports that the four meter stations are: Western-Mosbacher-Pruett meter station, the Phillips Rawson Booster meter station and the Western Watford City meter station all located in McKenzie County, North Dakota; and the Temple meter station located in Williams County, North Dakota.

Williston Basin says the field compressors and oil enhancement recovery project previously fueled by the gas delivered through these four meters stations have been removed or abandoned so there are no downstream operating facilities. Williston Basin states that the facilities to be abandoned are located on existing pipeline right-of-way, and all excavation at the sites will take place entirely on existing, previously disturbed, pipeline right-of-way. Williston Basin asserts that no retail sales and/or transportation to end-use customers will be affected by this proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29348 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2666–007, Maine]

Bangor Hydroelectric Company; Notice of Availability of Draft Environmental Assessment

October 28, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing reviewed the application for a new license for the Medway Hydroelectric Project, and prepared a Draft Environmental Assessment (DEA) for the project. The Medway Project is located on the West Branch Penobscot River in the town of Medway, Penobscot County, Maine. The DEA contains the staff's analysis of potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The DEA is available in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact David Turner, Environmental Coordinator, at (202) 219–2844.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29354 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–020]

Safe Harbor Water Power Corporation; Notice of Availability of Environmental Assessment

October 28, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed the application for license amendment for the Safe Harbor Hydroelectric Project,No. 1025–020. The Safe Harbor Project is located on the Susquehanna River in York and Lancaster Counties, Pennsylvania. The licensee is proposing to raise the normal maximum forebay elevation by 0.8 ft., from Elevation 227.2 ft. to Elevation 228.0 ft. Raising the forebay elevation can be completed operationally, and would not require any modifications to project structures. A Final Environmental Assessment (FEA) was prepared, and the FEA finds that approving the amendment application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact Ms.Hillary Berlin, at (202) 219–0038.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29360 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL99–1–000]

Federal and State Regulation of Natural Gas Services; Notice of Conference

October 28, 1998.

Take notice that the Federal Energy Regulatory Commission (Commission) will host a conference on February 25, 1999, to discuss the relationship between the federal regulation of interstate natural gas pipelines and the unbundling of retail natural gas service at the state level.

As the Commission has recently stated, ''[r]etail unbundling of natural gas services must be recognized as an important element in the evolving national energy market.'' [1] The relationship between state retail unbundling and federal regulation of the pipeline system has important implications for the smooth functioning of the natural gas pipeline grid. Thus, the Commission is interested in encouraging an environment that will allow state commissions and local distribution companies to implement retail unbundling in a manner that also accommodates the Commission's goals for the pipeline grid.

To this end, the Commission is interested in hearing different views on how to coordinate federal and state regulation in the new competitive gas market. The Commission is also interested in understanding the status of retail unbundling. The Commission's goal is to ensure an environment in which natural gas users can reap the benefits of both the restructured interstate natural gas market created by Order No. 636 and retail unbundling, when chosen as the preferred policy at the state level. Since the Commission is currently engaged in a comprehensive reexamination of its natural gas policies,[2] this appears to be an appropriate time to examine the interrelationship of the Commission's policies and proposals and the state retail policies. Therefore, the Commission has decided to convene this conference.

Scope of Discussion. The Commission is interested in determining the status of the unbundling of retail natural gas service. Specifically the Commission is interested in the following issues: Which states have already implemented retail unbundling programs? What are the chief components of these programs? What have been the benefits of such programs? How have local distribution companies (LDCs) implemented state unbundling programs? Which states are currently considering implementing retail unbundling programs? What are the various proposals for unbundling programs that are being considered? How do the state programs address the issue of the allocation of capacity on interstate pipelines? What types of stranded costs issues are state commissions confronting or are likely to confront? Specifically, how are states dealing with stranded costs of upstream pipeline capacity? How should an LDC's status as a supplier of last resort, if applicable, influence policies on both sides of the city gate, *e.g.*, open access and retail unbundling? What is the relationship between state unbundling plans and federal regulation? For example, how do state unbundling plans work with the Commission's capacity release regulations and the ''shipper must have title'' policy? What effect do particular rate designs have on an LDC's ability to be competitive?

The Commission is also interested in determining what actions by the Commission, or the states, could help remove any impediments to, or facilitate the appropriate development of, state retail unbundling, while at the same time maintaining the benefits of the restructured interstate natural gas market created by Order No. 636. Specifically, the Commission is interested in the following questions: How do states take into account federal regulations or policies when developing state retail unbundling plans? What types of inconsistencies may arise, or have arisen, between federal and state regulation when it comes to state retail unbundling programs? Should inconsistencies between federal and state regulation with respect to retail unbundling be resolved by waivers on a case-by-case basis or is a generic approach required? What effect would the proposals in the Notice of Proposed Rulemaking in *Short Term Natural Gas Transportation Services,* Docket No. RM98–10–000, have on state retail unbundling? What effect would the potential changes discussed in the Notice of Inquiry in *Regulation of Interstate Natural Gas Transportation Service,* Docket No. RM98–12–000, have on state retail unbundling?

Conference location. The conference will be held at the offices of the Federal Energy Regulatory Commission in the Commission Meeting Room, Room 2C, 888 First Street, NE., Washington, DC, 20426. Speakers that have audio/visual requirements should contact Wanda Washington at (202) 208–1460, no later than February 11, 1999.

Procedures to Participate. In order to obtain a complete picture of the relationship between federal regulation and state unbundling, the Commission seeks the views of all segments of the gas industry, especially state commissions and LDCs. The conference will be organized so that a cross section of views are obtained. Any person who wishes to participate in the conference should submit a written request to the

[1] Atlanta Gas Light Company, 84 FERC ¶ 61,119 at 61,638 (1998).

[2] Regulation of Short-Term Natural Gas Transportation Services, Notice of Proposed Rulemaking, 63 FR 42982 (Aug. 11, 1998) and Regulation of Interstate Natural Gas Transportation Services, Notice of Inquiry, 63 FR 42974 (Aug. 11, 1998).

Secretary of the Commission by January 26, 1999. The request should indicate the scope of the participants' planned remarks. This will assist in selecting the members of each panel. A separate notice organizing the conference will be issued at a later date.

Written comments may be filed at any time, but should be filed within 15 days after the conference.

The Capitol Connection will broadcast live the audio from the public conference on its wireless cable system in the Washington, DC area. If there is sufficient interest from those outside the Washington, DC metropolitan area, the Capitol Connection may broadcast the conference live via satellite for a fee. Persons interested in receiving the audio broadcast, or who need more information, should contact Shirley Al-Jarnai or Julia Morelli at the Capitol Connection at (703) 993–3100, no later than February 18, 1999.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone. Call (202) 966–2211 for details. Billing is based on time on-line.

All questions concerning the format of the conference should be directed to:

David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1275

John Carlson, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0288

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–29361 Filed 11–2–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6183–2]

Drinking Water State Revolving Fund (DWSRF) Program Policy Announcement: Eligibility of Using DWSRF Funds to Create a New Public Water System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a policy decision for the Drinking Water State Revolving Fund (DWSRF) program that will allow States to make loans for projects that are needed to solve public health problems for residents currently served by individual wells or surface water sources. This policy would expand the universe of eligible loan recipients by allowing loans to an entity that is not currently a public water system, but which will become a public water system upon completion of the project. The Agency published the proposed policy in the **Federal Register** on June 12, 1998 to seek comment. Comments received during a public comment period and in a stakeholder meeting held on July 13, 1998 were considered in developing the final policy.

Background

Section 1452(a)(2) of the Safe Drinking Water Act (SDWA) Amendments states that ''financial assistance under this section may be used by a public water system only for expenditures . . . which . . . will facilitate compliance with national primary drinking water regulations . . . .'' The Act defines a public water system (PWS) as a ''system . . . (of) pipes or other constructed conveyances'' which regularly serves at least 15 service connections or at least 25 individuals.

Several States indicated that a strict interpretation of this provision would prevent them from providing funds to an entity (e.g., homeowners' association, township) that has a public health problem and is not currently a PWS, but which would become a federally regulated PWS upon construction of a piped system. States want the flexibility to provide DWSRF funds to these entities in order to solve public health problems posed by contaminated wells. While the SDWA does allow States to lend funds to an existing PWS to extend lines to solve these types of public health problems, not all of these situations have an existing PWS nearby that is willing or able to help.

EPA believes that the statute permits the DWSRF to be used to create a federally regulated PWS in limited circumstances to solve public health problems intended to be addressed by the statute. However, the Agency proposed several conditions in its June 12, 1998 **Federal Register** proposal which would have to be met before such a project could be funded. They were: (a) upon completion of the project, the entity responsible for the loan must meet the definition of a Federal community public water system; (b) funding is limited to projects on the State's fundable list where an actual public health problem with serious risks exists; (c) the project must be limited in scope to the specific geographic area affected by contamination; (d) the project can only be sized to accomodate a reasonable amount of growth expected over the life of the facility—growth cannot be a substantial portion of the project; and (e) the project must meet the same technical, financial and managerial capacity requirements that the SDWA requires of all DWSRF assistance recipients.

Comments

Comments were received from 31 parties by July 27, 1998 (1 week after close of the comment period). Support was divided, with 17 in favor of, and 14 opposed to, the proposal. Commentors in support of the policy came from state health and environmental quality departments, national associations representing water utilities, engineering professionals and town managers. Commentors opposed to the policy were from national associations representing ground water professionals, and representatives of state well driller's associations and associated industries.

Most of the comments in support of the policy only asked for clarification of the language used in the proposal. One commentor asked that the policy be extended to address situations where homeowners receive unsafe drinking water from surface water sources.

There were three main concerns expressed by those opposing the policy. The first was that, in proposing such a policy, EPA is implying that drinking water provided by private wells is unsafe or inferior to that provided by public water systems. Comments indicated that the Agency does not distinguish between contaminated wells and contaminated ground water and that, in the case of the former, there are often solutions that will result in the provision of safe drinking water. The second concern was that, in rushing to build new water systems, communities and states would not sufficiently evaluate all possible alternatives to solving a problem in an effort to identify the most cost-effective solution. The third concern was that homeowners served by private wells would be forced to ''hook-on'' to a system, would not receive sufficient notice when a PWS was proposed, or would not receive balanced information about alternatives to construction of a new PWS. A concern raised by environmental organizations at a stakeholder meeting held to discuss the proposal was that the policy could result in growth or urban sprawl. Although EPA limits projects to encompass ''reasonable growth'', it provides no definition of what is reasonable.

Response to Comments

In proposing this policy, EPA did not intend to imply that private wells do not provide safe drinking water to users. There are millions of people in the nation that obtain water from wells with good drinking water quality. However, it must be acknowledged that there are situations where the public health of citizens would be better protected by creating a public water system supplying drinking water that is required to meet all health-based standards. States need the flexibility to address these important public health concerns.

The Agency recognizes that every situation is different, and that in many cases construction of a public water system is not the most cost-effective solution to addressing problems caused by poor ground water quality or poorly constructed wells. In response to the comments received, we have added an additional condition that must be met before a loan can be issued to construct a public water system. This condition requires that a State determine that the project proposed to create a public water system is a cost-effective solution to resolve the problem causing a risk to public health.

It is important to remember that these projects are funded using loans, which must ultimately be repaid by the users of the system. The DWSRF program requires that all applicants have adequate technical, financial and managerial capacity to operate a system. States are also required by the Safe Drinking Water Act to ensure that any new system created after October 1, 1999 will have adequate capacity to ensure provision of safe drinking water. If the cost of a project is too high or if community support for a project is lacking, it becomes more difficult to guarantee repayment of a loan, and the project would not receive assistance. States have also indicated that they have little interest in promoting the creation of new small systems, which often have more trouble complying with drinking water regulations. These controls, along with the condition described above and other requirements, should ensure that only cost-effective projects that are needed to protect public health receive assistance.

Public participation is an important element of the 1996 SDWA Amendments and the DWSRF program. States are required to release their Intended Use Plans for public review and comment before they can receive federal funds. States have policies in place to ensure that there is sufficient notification at the local level as well. For example, all projects are required to undergo an environmental review, which includes requirements for public notification. Additionally, in some States, where communities must approve debt, the public must approve a project by referendum. EPA strongly encourages States to ensure that homeowners which would be served by a proposed PWS get adequate notice and informational material to allow them to make an informed decision.

The issue of growth is important for the Agency as well as for environmental organizations. The DWSRF program cannot be used to finance projects where the primary purpose is growth and only allows for growth considered to be reasonable. The Agency has been hesitant to define ''reasonable'' because one definition would not capture the variability between States. For example, what is reasonable in Arizona may be completely unacceptable in New Hampshire. Many States are also sensitive to the issue of growth and have developed their own policies to address what is reasonable. For example, in one State, a proposed service area would only be allowed to encompass two properties (wells) beyond the last contaminated well. In another State the amount of growth that is considered reasonable is that which would increase capacity of the existing user base by 10%. Additionally, in most cases, requirements for environmental review should ensure that unworthy projects are not funded.

Minor changes to the final policy were also made in response to comments asking for clarification regarding such eligibility issues as creation of a system to replace a surface water source or creation of a regional public water system to consolidate smaller systems.

Final Policy

EPA will allow for the creation of a community water system (publicly or privately owned) to address an existing public health problem caused by unsafe drinking water provided by individual wells or surface water sources. This policy also extends to a situation where a new regional PWS is created by consolidating several existing PWS's that have technical, financial or managerial difficulties.

When reviewing an application for assistance the State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem.

A proposed project may only receive assistance if the following conditions are met:

(a) Upon completion of the project, the entity responsible for the loan must meet the definition of a Federal community public water system;

(b) The project must be on the State's fundable list and must address an actual public health problem with serious risks;

(c) The project must be limited in scope to the specific geographic area affected by contamination;

(d) The project can only be sized to accomodate a reasonable amount of growth expected over the life of the facility—growth cannot be a substantial portion of the project;

(e) The project must meet the same technical, financial and managerial capacity requirements that the SDWA requires of all DWSRF assistance recipients; and

(f) The project is a cost-effective solution to solving the public health problem.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Act Hotline, telephone (800) 426–4791. Information about the DWSRF program, including program guidelines and State contact information, is available from the EPA Office of Ground Water and Drinking Water Web Site at the URL address ''http://www.epa.gov/safewater.''

Dated: October 22, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–29448 Filed 11–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–KY; FRL–6032–8]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Commonwealth of Kentucky's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 28, 1998, the Commonwealth of Kentucky submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Kentucky's application, provides a 45–day public

comment period, and provides an opportunity to request a public hearing on the application. Kentucky has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Kentucky.

DATES: Comments on the authorization application must be received on or before December 18, 1998. Public hearing requests must be received on or before November 17, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB-402404-KY'' (in duplicate) to: Environmental Protection Agency, Region IV, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104. Comments, data, and requests for a public hearing may also be submitted electronically to: beldin-quinones.john@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: John A. Beldin-Quinones, Project Officer, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104, Telephone: (404) 562–9171, e-mail address: beldin-quinones.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Kentucky's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of Kentucky's proposed program has been provided by the applicant:

The Commonwealth of Kentucky, through the Kentucky Department of Public Health (KDPH), is seeking authorization from EPA to administer and enforce its own lead-based paint activities program. The authority to administer and enforce the Kentucky Lead-Based Paint Program was established in the 1996 regular session of the Kentucky General Assembly.

The State lead-based paint program regulations are applicable to persons engaged in lead-based paint activities in target housing and child-occupied facilities. The State certification program requirements include the certification of firms, inspectors, risk assessors, supervisors, project designers and workers, as well as work practice standards for all of these disciplines, adopted from section 402 of TSCA.

Persons and companies seeking certification must apply using specified form(s), pay an application fee, and provide proof of accredited training, education and experience for the discipline which they are applying. Companies must also provide a list and certification number of KDPH-certified employees, and provide a notarized affidavit stating that its employees will follow standard work practices established by Kentucky regulations.

Training providers shall submit their name, address, and telephone number, a fee for each course, a list of courses proposed for accreditation, and documentation of the training manager's qualifications. In addition, training providers must submit documentation establishing reciprocity between the accreditation by another State and Kentucky's requirements; or a statement signed by the training manager certifying that the training program meets the requirements established by Kentucky regulations, with submission of manuals and course information; or provide information indicating that the training provider is using materials developed by EPA.

Except for the worker discipline, all individuals must successfully pass the third party exam, administered by the Department of Technical Education (Kentucky Tech System), applicable to the discipline in order to be certified.

The State program requires abatement permits prior to the commencement of abatement activity. The KDPH will investigate tips and complaints, and enforce certification, accreditation, and permitting requirements for all disciplines, and for all abatement-

related activities, including training. The KDPH will refer possible waste disposal violations to the Department of Environmental Protection. The State program provides for the suspension, revocation, or modification of training program accreditation and certifications of individuals and firms.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB-402404-KY.'' Copies of this notice, the Commonwealth of Kentucky's authorization application, and all comments received on the application are available for inspection in the Region IV office, from 8 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region IV Library, Environmental Protection Agency, Atlanta Federal Center, 9th Floor, 61 Forsyth St., SW., Atlanta, GA.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

beldin-quinones.john@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB-402404-KY.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 16, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 98–29445 Filed 11–2–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–GA; FRL–6032–7]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Georgia's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 27, 1998, the State of Georgia submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Georgia's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Georgia has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Georgia.

DATES: Comments on the authorization application must be received on or before December 18, 1998. Public hearing requests must be received on or before November 17, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB-402404-GA'' (in duplicate) to: Environmental Protection Agency, Region IV, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104. Comments, data, and requests for a public hearing may also be submitted electronically to: bates.keith@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Keith Bates, Project Officer, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104, Telephone: (404) 562–8992, e-mail address: bates.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Georgia's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following is a summary of Georgia's training, certification, accreditation and enforcement program.

In 1994, the Georgia General Assembly passed the Lead Poisoning Prevention Act of 1994, O.C.G.A. 31-41-4, *et seq.*, as amended. This statute designated the Department of Natural Resources as the State agency responsible for implementation, administration, and enforcement of the Georgia Lead-Based Paint Certification Program. The Commissioner designated these duties to the Environmental Protection Division. The Act was amended by the Georgia General Assembly in 1998. On June 24, 1998, the Board of Natural Resources adopted the Lead-Based Paint Abatement, Certification and Accreditation Rules which became final on July 16, 1998.

The Lead-Based Paint Abatement, Certification and Accreditation Rules are applicable to all individuals and firms who are engaged in lead-based paint activities, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner while these activities are being performed, or a child residing in the residential dwelling has been identified as having an elevated blood level.

The rules contain procedures and requirements for the accreditation of lead-paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and standards for performing such activities. The rules also contain requirements that all lead-based paint

activities in target housing and child-occupied facilities shall be performed by certified individuals and firms.

The State is authorized to assess penalties and revoke or suspend any license, certification, approval, or accreditation issued in accordance with the State program. Enforcement activities include audits of training providers, inspection of lead-based paint activities, and investigation of tips and complaints.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB-402404-GA.'' Copies of this notice, the State of Georgia's authorization application, and all comments received on the application are available for inspection in the Region IV office, from 8 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA Region IV Library, Environmental Protection Agency, Atlanta Federal Center, 9th Floor, 61 Forsyth St., SW., Atlanta, GA.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

bates.keith@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB-402404-GA.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 16, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 98–29446 Filed 11–2–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–NC; FRL–6032–9]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of North Carolina's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 24, 1998, the State of North Carolina submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of North Carolina's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. North Carolina has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in North Carolina.

DATES: Comments on the authorization application must be received on or before December 18, 1998. Public hearing requests must be received on or before November 17, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB-402404-NC'' (in duplicate) to: Environmental Protection Agency, Region IV, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104. Comments, data, and requests for a public hearing may also be submitted electronically to: beldin-quinones.john@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: John A. Beldin-Quinones, Project Officer, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104, Telephone: (404) 562–9171, e-mail address: beldin-quinones.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether North Carolina's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of North Carolina's proposed program has been provided by the applicant:

The State of North Carolina, through the Health Hazards Control Branch, will implement the Lead-Based Paint Hazard Management Program, based on authority granted by the North Carolina Legislature during ratification of Senate Bill 516 on August 28, 1997.

The North Carolina regulations are applicable to persons engaged in lead-based paint activities in target housing and child-occupied facilities. The State certification program requirements include: accreditation of lead-based paint activities training providers and training courses; certification of firms and individuals conducting lead-based paint inspections, risk assessments, or abatement in target housing and child-occupied facilities; permitting abatement projects; and required work practice standards for lead-based paint activities. Training providers conducting training in North Carolina must be accredited by the program. All initial and refresher training courses conducted in North Carolina must be accredited by the program, or by a State that has a written reciprocating agreement with the program. Additional requirements include on-site audits for approval of a training program and written notification of intent to teach the course in North Carolina prior to the start date of the course.

Work practice standards required for lead-based paint activities are equivalent to standards in the Federal regulations, but also include that a

certified supervisor must be on site at all times during abatement activities, an occupant protection plan must be prepared by a certified project designer for all projects greater than five units, and all abatement activities require an abatement permit, with a permit application that must be received 10 working days prior to starting the project. North Carolina's Rules provide for the suspension and revocation of training provider accreditation, training course accreditation, firm certification, and individual certification. Additionally, the program has the capacity to investigate tips and complaints, conduct follow up inspections, assess administrative and civil penalties for violations, and pursue criminal actions.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB-402404-NC.'' Copies of this notice, the State of North Carolina's authorization application, and all comments received on the application are available for inspection in the Region IV office, from 8 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region IV Library, Environmental Protection Agency, Atlanta Federal Center, 9th Floor, 61 Forsyth St., SW., Atlanta, GA.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

beldin-quinones.john@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB-402404-NC.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 16, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 98–29447 Filed 11–2–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 28, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 4, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0028.

Title: Application for Authorization in the Auxiliary Broadcast Services.

Form Number: FCC 313.

Type of Review: Revision to an existing collection.

Respondents: Businesses or other for-profit entity; State, Local or Tribal Government.

Number of Respondents: 1,500.

Estimated Time per Response: 5.166 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 7,749 hours.

Estimated Cost to Repondents: None.

Needs and Uses: FCC 313 is used by licensees or permittees of AM, FM and TV broadcast stations and eligible networks when applying for a remote pickup, aural microwave, television microwave, and other various auxiliary broadcast stations.

Statutory authority for this collection of information is contained in Sections 154(i) and 308 of the Communications Act of 1934, as amended. This form is required by 47 CFR 73.3500 and 73.3533. The data are used by FCC staff to determine if the proposal will meet statutory requirements, determine eligibility for a license, to aid in frequency spectrum management and to ensure interference will not be caused to existing stations. The data are also used to issue an authorization and may be used for enforcement purposes when necessary.

This information collection is being incorporated into the Universal Licensing System (ULS) which combines 11 separate licensing databases and is currently under development with gradual implementation by radio service. New application forms have also been developed for ULS filing. Microwave Broadcast Auxiliary is scheduled for conversion to ULS in January 1999 and Land Mobile Broadcast Auxiliary in April 1999. However, we intend to permit these applicants to file the old application forms, including FCC 313, or the new ULS forms, approximately six months after conversion to ULS. After the published timeframe, applicants will be required to file only the ULS forms.

This collection is being revised to collect antenna structure registration number as a result of the FCC implementing new antenna procedures under Part 17; to amend the mailing location of feeable applications; to revise collection of measurements to metric only; and to delete the fee information as it is now required to be submitted on an FCC Fee Remittance Advice, FCC Form 159. These revisions do not change the estimated burden per response.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–29386 Filed 11–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1250–DR]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1250–DR), dated September 30, 1998 and related determinations.

EFFECTIVE DATE: October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include Public Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 30, 1998:

Choctaw and Lowndes Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29421 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1254–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1254–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 14, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms, flooding, and tornadoes on October 1–8, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carolyn J. Coleman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Johnson, Seward, and Wyandotte Counties for Individual Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–29425 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1254–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1254–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Douglas and Leavenworth Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29426 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1246–DR]

Louisiana; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, (FEMA–1246–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1998:

St. Bernard, St. Tammany, and Tangipahoa Parishes for Public Assistance (already designated for Individual Assistance and Direct Federal assistance at 100 percent Federal funding for a 72-hour period beginning at 1800 hours September 27, 1998, and ending September 30, 1998 at 1800 hours. Emergency protective measures (Category B) at 100 percent Federal funding for a 72-hour period beginning at 1800 hours September 27, 1998, and ending September 30, 1998 at 1800 hours).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29422 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1251–DR]

Mississippi; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi, (FEMA–1251–DR), dated October 1, 1998, and related determinations.

EFFECTIVE DATE: October 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 1998:

Jasper County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29418 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1251–DR]

Mississippi; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi, (FEMA–1251–DR), dated October 1, 1998, and related determinations.

EFFECTIVE DATE: October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 1998:

Covington, Marion, Perry and Wayne Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29419 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1251–DR]

Mississippi; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi, (FEMA–1251–DR), dated October 1, 1998, and related determinations.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 1998:

Covington County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29420 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 14, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 14, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding on October 4–11, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Carroll, Clay, and Jackson Counties for Individual Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–29424 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1245–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1245–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1998:

Jefferson County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29416 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include Categories A and B under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Austin, Fort Bend, Harris, Montgomery, and Waller Counties for Individual Assistance and Categories A and B under the Public Assistance Program.

Bastrop, Bexar, Burleson, Caldwell, Calhoun, Colorado, Comal, DeWitt, Fayette, Goliad, Gonzales, Guadalupe, Hays, Jackson, Karnes, Refugio, Travis, Victoria, Wharton, and Wilson Counties for Categories A and B under the Public Assistance Program (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29417 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1252–DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1252–DR), dated October 5, 1998, and related determinations.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 5, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from severe storms and flooding on May 26–29, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance

Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mark R. Ekman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

Ferry and Stevens Counties for Public Assistance.

All counties within the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–29423 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1255–DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1255–DR), dated October 16, 1998, and related determinations.

EFFECTIVE DATE: October 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 16, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from a landslide in the City of Kelso (Cowlitz County), specifically the Aldercrest-Banyon subdivision, on March 6, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Nellie Ann Mills of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

City of Kelso (Cowlitz County), specifically the Aldercrest-Banyon subdivision for Individual Assistance and Public Assistance.

All counties within the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–29427 Filed 11–2–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 63 FR 57125, October 26, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M., Wednesday, October 28, 1998.

CHANGE IN THE MEETING: The following topic was moved from the open portion to the closed portion of the meeting:

- Supervisory Determination—Tahquitz Court

The above matter was moved to the closed portion of the meeting, pursuant to section 906.5(b) of the Finance Board regulations and exempt under section 552b(c)(8) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–29542 Filed 10–30–98; 3:25 pm]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Horizon International Co., 1310 E. Ocean Blvd., #603, Long Beach, CA 90802, Benjamin N.K. Ho, Sole Proprietor

Boston Logistics, Inc., 186 Lee Burbank Highway, Revere, MA 02151, Officers: Edward S. Kaplan, President; Glenn J. Calvino, Vice President

ISCO 1 (International Service Company 1), 7322 Onyx Street, New Orleans,

LA 70124, Officer: Patricia S. McKinnon, President

Dated: October 29, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–29399 Filed 11–2–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Michael P. Finbraaten, Connie S. Hoff, and Curtis R. Sheely, all of Adams, Minnesota; to acquire voting shares of Adams Bancshares, Inc., Adams, Minnesota, and thereby indirectly acquire voting shares of Farmers State Bank of Adams, Adams, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Knox Company FBO Harry Newlon, Individual IRA Account, Artesia, New Mexico; Knox Company FBO Nancy Newlon, Individual IRA Account, Artesia, New Mexico; Ronald K. Humphreys, Artesia, New Mexico; Knox Company FBO Ronald K. Humphreys, Individual IRA, Account, Artesia, New Mexico; Knox Company FBO W. Everett Crawford, Individual IRA, Account, Artesia, New Mexico; Knox Company FBO Belen Herrera, Individual IRA Account, Artesia, New Mexico; Knox Company FBO Sylvian Gillespie, Individual IRA Account, Artesia, New Mexico; Kenneth B. and Sharon E. Berry, Artesia, New Mexico; Susan K. and George E. Holmes, Artesia, New Mexico; Greg and Elizabeth Marrs, Hobbs, New Mexico; George M. and Marie E. Casabonne, Hope, New Mexico; Mike G. and Dewanna Casabonne, Hope, New Mexico; H. Crawford and M. Kay Culp, Hobbs, New Mexico; Russell Edward Guy, Artesia, New Mexico; Raye P. and Mary K. Miller, Artesia, New Mexico; Tom and Mary Jo Vandiver, Artesia, New Mexico; Brooks Holladay Trust B, Hobbs, New Mexico; Gilbert Gomez, Hagerman, New Mexico; Paul or Roetta Hudson, Artesia, New Mexico; Myco Industries, Inc., Artesia, New Mexico; William and Marilyn Mershon, Mayhill, New Mexico; James A. Ellett, Hope New Mexico; The First National Bank of Artesia as Trustee for the J.B. and Bereneice Runyan Trust, Bereneice Runyan, Trustee and Susan Holmes, Trustee, Artesia, New Mexico; Jackolin Runyan Jordan, Carlsbad, New Mexico; Clyde Guy Estate, Mary Jo Guy, Personal Representative, Artesia, New Mexico; and GenCon Corporation Profit Sharing Plan and Trust FBO Michael P. Clute, Mesilla, New Mexico; all to retain voting shares of First Artesia Bancshares, Inc., Artesia, New Mexico, and thereby indirectly acquire The First National Bank of Artesia, Artesia, New Mexico.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Franklin Mutual Series Fund, Inc., Short Hills, New Jersey (''the Fund''); to acquire additional voting shares of Western Bancorp, Newport Beach, California, and thereby indirectly acquire additional voting shares of Santa Monica Bank, Santa Monica, California, and Southern California Bank, Newport Beach, California. Subsidiaries of Franklin Resources, Inc., San Mateo, California, including Franklin Mutual Advisers, Inc., Franklin Templeton Services, Inc., and Franklin/Templeton Distributors, Inc., serve as investment adviser, administrator, and principal underwriter/distributor for the Fund, and provide additional services to the Fund.

Board of Governors of the Federal Reserve System, October 28, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29324 Filed 11–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act, Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. SUM Financial Corporation, Pearson, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Exchange Bank, Pearson, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. Warren County Bancshares, Inc. Warrenton, Missouri; to acquire 100 percent of the voting shares of the Central Missouri Bancshares, Inc., Sedalia, Missouri, and thereby indirectly acquire Central Bank of Missouri, Sedalia, Missouri.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of Big Sky Western Bank, Big Sky, Montana.

2. First National Bank At St. James ESOP, St. James, Minnesota; to acquire an additional 15.67 percent, for a total of 39.85 percent, of the voting shares of First National Agency At St. James, St. James, Minnesota, and thereby indirectly acquire First National Bank At St. James, St. James, Minnesota.

Board of Governors of the Federal Reserve System, October 28, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29326 Filed 11–2–98; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. HSBC Holdings PLC, London, England; HSBC Finance (Netherlands) Limited, London, England; HSBC Holdings BV, Amsterdam, The Netherlands, and Hongkong Bank of Canada, Vancouver, British Columbia, Canada; to acquire Gordon Capital Corporation, Toronto, Ontario, Canada, Gordon Capital Holdings Inc., and Gordon Capital, Inc., both of New York, New York, and thereby engage in agency brokerage and private placement activities, pursuant to § 225.28(b)(7) of Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Louisiana Capital Corporation, Vidalia, Louisiana; to acquire Community Credit Centers, Inc., Natchez, Mississippi and Monroe, Louisiana, and thereby engage in consumer finance, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29325 Filed 11–2–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations of Topics for Research on Therapeutics

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) invites nominations of topics of study and ideas for implementation of a new program, Centers for Education and Research on Therapeutics, which will be established by AHCPR in conjunction with the Food and Drug Administration (FDA). The program is described in Section 409 of the Food and Drug Modernization Act, quoted below. AHCPR plans to publish during Fiscal Year 1999 a Request for Applications (RFA) for cooperative agreements to establish and operate one or more Centers. Nominated topics selected by AHCPR will be considered in developing the RFA.

Sec. 409. Centers for Education and Research on Therapeutics

Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end of part A the following new section:

Sec. 905. Demonstration Program Regarding Centers for Education and Research on Therapeutics

(a) In General.—The Secretary, acting through the Administrator and in consultation with the Commissioner of Food and Drugs, shall establish a demonstration program for the purpose of making one or more grants for the establishment and operation of one or more centers to carry out the activities specified in subsection (b).

(b) Required Activities.—The activities referred to in subsection (a) are the following:

(1) The conduct of state-of-the-art clinical and laboratory research for the following purposes:

(A) To increase awareness of—

(i) New uses of drugs, biological products, and devices;

(ii) Ways to improve the effective use of drugs, biological products, and devices; and

(iii) Risks of new uses and risks of combinations of drugs and biological products.

(B) To provide objective clinical information to the following individuals and entities:

(i) Health care practitioners or other providers of health care goods or services;

(ii) Pharmacy benefit managers;

(iii) Health maintenance organizations or other managed health care organizations;

(iv) Health care insurers or governmental agencies; and

(v) Consumers.

(C) To improve the quality of health care while reducing the cost of health care through—

(i) The appropriate use of drugs, biological products, or devices; and

(ii) The prevention of adverse effects of drugs, biological products, and devices and the consequences of such effects, such as unnecessary hospitalizations.

(2) The conduct of research on the comparative effectiveness and safety of drugs, biological products, and devices.

(3) Such other activities as the Secretary determines to be appropriate, except that the grant may not be expended to assist the Secretary in the review of new drugs.

DATES: To be considered for Fiscal Year 1999, nominations of topics and ideas for implementation for CERTS, in accordance with the criteria set out below, should be submitted by December 18, 1998. Nominations after that date will be accepted on an ongoing basis for consideration in future studies.

ADDRESSES: Nominations of topics and ideas for implementation should be sent to: Center for Outcomes and Effectiveness Research, AHCPR; ATTENTION: Joanne Book; 6010 Executive Boulevard; Suite 300; Rockville, Maryland 20852 or e-mail at jbook@ahcpr.gov. All responses will be available for public inspection at AHCPR's Information Resource Center (IRC) public reading room between the hours of 8:30 a.m. and 5 p.m. on regular business days at 2101 East Jefferson Street, Suite 500, Rockville, MD 20852.

Arrangements for reviewing the submissions may be made by calling 301 594–1360. Responses may also be accessed after December 1, 1998, through AHCPR's Electronic FOIA Reading Room on AHCPR's Website *(www.ahcpr.gov).*

FOR FURTHER INFORMATION CONTACT: Lynn Bosco, M.D., M.P.H., Medical Officer, COER, AHCPR, at the above address. (Phone 301 594–1485; e-mail lbosco@ahcpr.gov)

SUPPLEMENTARY INFORMATION: The Food and Drug Administration Modernization Act of 1997 (Pub.L. 105–115) added a new section 905 to Title IX of the PHS Act (codified at 42 U.S.C. 299a–3). Section 905 requires AHCPR, in consultation with FDA, to set up a demonstration program for grants to establish Centers for Education and Research on Therapeutics to conduct research for the purposes set out above. AHCPR plans to publish, during Fiscal Year 1999, an RFA for cooperative agreements to establish and operate one or more Centers.

In FY 1999 there will be up to $2 million available to fund one or more centers. Recognizing the broad mission outlined in the legislation, AHCPR is requesting comments on:

- How the centers should be organized;
- The appropriateness of AHCPR or these centers seeking additional funding partners to increase the resources available for research;
- Initial area(s) of emphasis, drawing from the list outlined in the statute (reprinted above);
- High-priority research topics within the suggested initial area(s) of emphasis;
- Whether the Agency should include a list of specific research topics in the RFA to which applicants would respond or whether the RFA should focus primarily on the infrastructure and capacity of applicants and identify specific research issues to be addressed following selection of the centers; as well as
- Other issues that respondents believe need to be taken into account by the Agency in the implementation of this legislation.

General Considerations in Responding to these Questions.

Organization of the Centers. Are there existing frameworks, such as the NIH project or center grants (e.g. the Cancer Centers or Multipurpose Arthritis Centers), that could serve as a model project for the organization of these Centers?

Topic Selection. In developing topics and suggestions for how Centers might be organized, the roles of AHCPR and FDA, as defined below, should be considered. The FDA regulations most currently marketed drugs, biologics and medical devices. In order for marketing to occur, pre-marketing studies must be completed, with final approval for marketing contingent on manufacturers providing FDA evidence of safety and efficacy for a single indication through adequate and well-controlled studies. (The majority of devices receive clearance rather than approval after the manufacturer provides evidence that the product is substantially equivalent to a device that is already on the market).

Current regulations do not require information on how these products compare with the array of other existing therapies available, or use in the every day clinical settings. FDA regulation continues during the post-approval phase, through post marketing safety monitoring and through regulation of advertising.

The AHCPR activities related to therapeutics begin after product approval. The AHCPR supports research on the relative effectiveness, appropriateness, and cost effectiveness of various strategies for the prevention, diagnosis, treatment, and management of clinical conditions. Activities have included development and administration of a program to study patient outcomes, development of clinical guidelines and evidence based practice centers, and support of the development of quality measures.

The appropriate use of medical therapies, such as drugs, biologics and devices is critical to effective, high quality, affordable health care. Understanding which agents work; for which patients; and at what cost and risk; can inform programs in managing the selection, utilization, and cost of therapies and services within a changing health care environment. The Centers for Education and Research on Therapeutics will seek to make more information available after marketing to fill the gap between the research required for approval and the need for information to assist clinicians in the everyday use of products.

Selection Criteria

FDA's needs related to the necessity for going beyond the current voluntary reporting system to obtain needed safety and effectiveness information for providing guidance to practitioners on appropriate product use. The current post-marketing surveillance system provides only a fraction of the actual number of problems associated with product use, with only limited information available on the numbers of patients exposed to products. Little information is available on the interaction between the provider, product and patient. This is particularly important when a high degree of skill is required of either the provider or patient to use a product, thus making it difficult to determine whether problems relate to provider or patient error, product defect or an adverse event.

Selection criteria for AHCPR sponsored research have been the following: (1) High incidence or prevalence in the general population or in subpopulations, including racial and ethnic minorities, women and children; (2) significance to the Medicare, Medicaid and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) potential to inform and improve patient or provider decision making; (6) potential to reduce clinically significant variations in the prevention, diagnosis, treatment, or clinical management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the study or analysis of the topic; and (8) potential opportunities for rapid implementation.

Submission Process

Nominations of topics and suggestions for organization of the Centers should focus on broad aspects of the legislative program as set out above. For each topic nominated, nominators should provide a rationale and any available supporting evidence reflecting the importance and clinical relevance of the topic and should indicate the potential usefulness of the research in improving the quality of health care while reducing the cost of health care through—the appropriate use of drugs, biological products, or devices; and the prevention of adverse effects of drugs, biological products, and devices; and the consequences of such effects.

Submissions should be brief (1–2 pages) and may be in the form of a letter or e-mail, preferable along with an electronic file in a standard work processing format on a 3½ floppy disk. Submissions should provide:

- A broadly defined topic or idea for organization and implementation of the CERTS, with specific questions to be answered that will establish the focus and boundaries of the research.

• The availability of data and/or, any information on product utilization, cost, the incidence, prevalence, and/or severity of the particular disease, health condition, adverse event or medical error relevant to the topic being nominated.

• Include, if relevant, the significance to Federal Health Programs or underserved populations; or an indication of how the research results or Center activities might be used within the professional or organizational setting.

AHCPR will not reply to individual responses, but will consider all responses in developing the CERTS program and selecting topics for study. AHCPR will review the submissions and supporting information before making final determinations, seeking additional information as appropriate.

Dated: October 26, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–29335 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research and Subcommittee for Community Affairs: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER).

Times and Dates: 8:30 a.m.–5:15 p.m., November 19, 1998; 8:30 a.m.–12 noon, November 20, 1998.

Place: Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311, telephone 703/845–1010, fax 703/845–2610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Matters to be Discussed: Agenda items will include update presentations from the National Institute for Occupational Safety and Health (NIOSH) and ATSDR on the progress of current studies; an update by the National Center for Environmental Health (NCEH) on coordination of activities with the National Cancer Institute (NCI); a presentation by NCI on Chernobyl, Radio Epi Tables and Ethel Gilbert's Research; a discussion by a panel of risk communications professionals on recommendations made by the National Academy of Sciences/Institutes of Medicine on the NCI report; and a discussion of committee recommendations and public involvement activities.

Agenda items are subject to change as priorities dictate.

Name: ACERER Subcommittee for Community Affairs.

Times and Dates: 1 p.m.–5 p.m., November 20, 1998; 8:30 a.m.–5 p.m., November 21, 1998.

Place: Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311, telephone 703/845–1010, fax 703/845–2610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee will advise ACERER on matters related to community needs and will report back to the Agency through the full committee.

Matters to be Discussed: Agenda items will include update presentations from NCEH, NIOSH, and ATSDR on the progress of current studies; a discussion of the September 24, 1998, ACERER meeting and the resolution resulting from that meeting; a discussion of a special report presented by the Tennessean newspaper on health problems in the vicinity of nuclear facilities; and a discussion of committee recommendations and public involvement activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., m/s F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: October 28, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–29380 Filed 11–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0515]

Agency Information Collection Activities; Announcement of OMB Approval; Amendments to Humanitarian Use Device (HUD) Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Amendments to Humanitarian Use Device (HUD) Requirements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1998 (63 FR 42404), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0384. The approval expires on October 31, 2001.

Dated: October 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29392 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0672]

Guidance on Criteria and Approaches for Postmarket Surveillance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of a guidance document entitled ''Guidance on Criteria and Approaches for Postmarket Surveillance.'' This guidance document provides examples of the agency's criteria and approaches for determining which products may be subject to postmarket surveillance (PS) under the Food and Drug Administration Modernization Act of 1997 (FDAMA). In developing this guidance document, the agency considered comments received from consumer, clinical, and industry representatives at a public meeting on changes in medical device tracking and PS authority on January 15, 1998, in Gaithersburg, MD. To facilitate conformance with the requirements under FDAMA, this guidance document is immediately in effect.

DATES: Written comments concerning the guidance document entitled ''Guidance on Criteria and Approaches for Postmarket Surveillance'' must be received by February 1, 1999. After February 1, 1999, you may submit written comments on the guidance document to the contact person listed below.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance on Criteria and Approaches for Postmarket Surveillance'' on a 3.5'' diskette to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit written comments regarding this guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Anita M. Rayner, Center for Devices and Radiological Health (HFZ–543), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–0639.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 amended the Federal Food, Drug, and Cosmetic Act (the act), among other things, to add section 522 (21 U.S.C. 360l) to require PS for certain medical devices. Section 522 of the act was further amended by FDAMA (Pub. L. 105–115). As amended, section 522 of the act revises the criteria for determining which devices are subject to PS and revises the procedures for implementing PS. The revised provisions of section 522 of the act became effective on February 19, 1998. FDA is making this guidance document available at this time in order to facilitate the initial implementation of the revised PS provisions.

This guidance document represents the agency's current thinking on criteria and approaches for PS. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's. This document is for immediate implementation to facilitate conformance with PS changes in section 522 of the act under FDAMA.

II. Electronic Access

In order to receive the guidance document entitled ''Guidance on Criteria and Approaches for Postmarket Surveillance'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (009) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH home page includes ''Guidance on Criteria and Approaches for Postmarket Surveillance,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

III. Comments

Interested persons may, on or before February 1, 1999, submit to Dockets Management Branch (address above) written comments regarding the guidance document. After February 1, 1999, submit to the contact person (address above) written comments regarding the guidance document. Such comments will be considered when determining whether to amend the current guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29390 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0108]

SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols.'' This guidance is for industry and FDA staff. This document indicates the agency's intent to terminate or continue postmarket surveillance (PS) orders for existing products and describes the criteria used to reach these determinations.

DATES: Written comments may be submitted at anytime.

ADDRESSES: Submit written comments on ''SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols'' to the contact person. Submit written

requests for single copies on a 3.5'' diskette of the guidance document entitled ''SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Laura A. Alonge, Center for Devices and Radiological Health (HFZ–543), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–0648.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Safe Medical Devices Act (the SMDA) of 1990, FDA had implemented required PS (RPS) for 17 category ''A'' devices (permanent implants the failure of which could result in death or serious injury) and one category ''C'' device (plasma sprayed porous coated hips). In addition, the discretionary PS (DPS) authority under the SMDA had been used to order studies of a number of devices. The FDA Modernization Act (FDAMA) of 1997 (Pub. L. 105–115) has significantly modified the requirements for PS under section 522 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360l). Under FDAMA, PS may be ordered only for those devices that are Class II or Class III the failure of which would be reasonably likely to have serious adverse health consequences or which is intended to be: (1) Implanted in the human body for more than 1 year, or (2) [is] life sustaining or life supporting and used outside a device user facility. The draft of this guidance was made available for comment on February 25, 1998. FDA received comments from three sources. General comments were supportive of the criteria used to make the determinations contained in the guidance and urged that manufacturers of devices for which PS orders would be rescinded be notified as quickly as possible. FDA agrees with these comments as well as comments related to three specific devices: Replacement heart valve, implantable cardioverter-defibrillator (ICD), and plasma-sprayed porous coated hip. The guidance for replacement heart valves and ICD's has been revised accordingly. The comments on the plasma-sprayed porous coated hip did not affect the guidance, but will be considered in the evaluation of each existing protocol for continuation or termination of PS requirements.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the disposition of existing PS protocols. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 318 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes ''SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''. ''SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance Protocols'' will be available at ''http://www.fda.gov/cdrh/modact/modguide.html''.

IV. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29389 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0928]

Semiannual Guidance Agenda

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing the first semiannual guidance document agenda. FDA committed to publishing, on a semiannual basis, possible guidance topics or documents for development or revision during the next year, and seeking public comment on additional ideas for new or revisions of existing guidance documents. This commitment was made in FDA's February 1997 ''Good Guidance Practices'' (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to seek public comment on possible topics for guidance documents and possible revisions to existing guidances.

DATES: Comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For general information regarding FDA's GGP's contact: Lisa L. Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

For information regarding specific topics or guidances, please see contact persons listed below.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publishing a semiannual guidance document agenda of possible guidance topics or documents for development or revision during the next year. The agency also committed to soliciting public input regarding these and additional ideas for new topics or revisions to existing guidance documents.

The agency is neither bound by this list of possible topics nor required to issue every guidance document on this list or precluded from issuing guidance documents not on the list set forth in this document.

The following list of guidance topics or documents represents possible new topics or revisions to existing guidance documents that the agency is considering. The agency solicits comments on the topics listed in this document and also seeks additional ideas from the public. On June 1, 1998, the President instructed all Federal agencies to ensure the use of ''plain language'' in all new documents. As part of this initiative, FDA is also seeking public comment on the clarity of its guidance documents.

The guidance documents are organized by the issuing Center or Office within FDA, and are further grouped by topic categories. The agency's contact persons are listed for each specific area.

II. Center for Biologics Evaluation and Research (CBER)

Title/Topic of Guidance	Contact
CATEGORY—COMPLIANCE AND INSPECTION	
Guidance for Reprocessing, Reworking, and Blending Practices for Biological Bulk Substances, Final Bulk, and Finished Products.	Stephen M. Ripley, Center for Biologics (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.
Guide for Inspection of Blood Banks.	Do.
Guide to Inspections of Source Plasma Establishments.	Do.
Compliance Program 7342.002, Inspection of Source Plasma Establishments.	Do.
Compliance Program 7342.001, Inspections of Licensed and Unlicensed Blood Banks.	Do.
Compliance Program for Inspections of Allergenic Product Manufacturers.	Do.
Compliance Program for Inspections of Licensed Therapeutic Products.	Do.
Guidance for the Design, Installation, and Operations of Water Systems.	Do.
Guidance on Heating, Ventilation, and Air Conditioning (HVAC) and the Monitoring of Environments for the Manufacture of Biological Substances and Products.	Do.
Guidance for the Validation of the Limulus Amebocyte Lystate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices.	Do.
CATEGORY—THERAPEUTICS	
Guidance for the Chemistry, Manufacturing and Control Information on Naturally Derived Proteins.	Do.
Guidance for the Chemistry, Manufacturing and Control Information on Gene Therapy Products.	Do.
Guidance on Monoclonal Antibodies and Orphan Drug Designation.	Do.
Guidance to Industry on Xenotransplantation.	Do.
Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans.	Do.
Guidance on Clinical Trial Issues in Wound Healing.	Do.
CATEGORY—BLOOD AND BLOOD COMPONENTS	
Guidance for Clarification of the December 11, 1996, Memorandum: ''Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jacob Disease (CDJ) by Blood and Blood Products.''	Do.
Guidance for Collection, Testing and Release of Autologous Blood.	Do.
Guidance for Recommendations for Donor Testing by Automated Methods When Using Treponemal Based Screening Tests for Syphilis.	Do.
Guidance for Reviewer Guidance for a Premarket Notification Submission for Automated Blood Establishment Testing Instruments.	Do.
Guidance for Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors.	Do.

Title/Topic of Guidance	Contact
Guidance for HIV Reentry Algorithms for Deferred Blood and Plasma Donors.	Do.
Guidance for Chemistry, Manufacturing and Control Information on In Vitro Diagnostic Products.	Do.
Guidance for Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Xenograft Recipients and Their Close Contacts, Through Whole Blood, Blood Components, Source Plasma, and Source Leukocytes.	Do.
Guidance for Additional Recommendations for Donor Questioning Regarding Travel to Areas Endemic for Malaria.	Do.
Guidance for Platelet Testing and Evaluation of Platelet Substitute Products.	Do.
Guidance for Size Limitations for Human Blood or Plasma Pools Used to Manufacture Injectable Drug Products.	Do.

III. Center for Devices and Radiological Health (CDRH)

Title/Topic of Document	Contact
Guidance on Custom Devices.	Wally Pellerite, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–4692.
Guidance on Medical Device Tracking—Revision (Level 1).	Casper Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 5600 Fishers Lane, HFZ–300, Rockville, MD 20857, 301–594–4692.
Guidance on PMA Submissions and Inspectional Quality System Regulation Assessment—Proposal (Level 1).	Wes Morganstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–4699.
Guidance on Inspection of Medical Device Manufacturers—Proposal (Level 1).	Do
Compliance Policy Guide on Remanufacturing of Used Medical Devices—Draft (Level 1).	Do.
Guidance on Year 2000 Issues for Medical Device Manufacturers and Servicers—Proposal (Level 1).	Stewart Crumpler, Center for Devices and Radiological Health (HFZ–343), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–4659, or Thomas Shoppe, Center for Devices and Radiological Health (HFZ–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3314.
Erythropoietin Assay.	Joseph L. Hacket, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3084.
Fibrin Monomer Paracoagulator Tests.	Do.
Kits for Screening Drugs of Abuse To Be Used by the Consumer.	Do.
Assayed and Unassayed Quality Control Material.	Do.
Point of Care In Vitro Diagnostic Devices.	Do.
Extracorporeal Membrane Oxygenators (ECMO).	Lynn A. Reamer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–8320.
Compressible Limb Sleeves.	Do.
Thermal Regulating Devices.	Do.
Cardiopulmonary Bypass Roller Pumps.	Do.
Guidance for Intraaortic Balloon Pumps.	Do.
Cardiac Monitors (including Cardiotachometers and Rate Alarm).	Do.
Electrocardiographs.	Do.
Cardiopulmonary Bypass Nonroller-Type Pumps.	Do.
Annulolasty Rings.	Do.
Vascular Prostheses.	Do.
Cardiopulmonary Bypass Arterial Filters.	Do.
Cardiopulmonary Bypass Defoamers.	Do.
Blood Gas Exchangers (Oxygenators) Used in Cardiopulmonary Bypass.	Do.
Endoscopes.	Patricia J. Miller, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5072.
Audiometers.	Do.
Assistive Listening Devices.	Do.
Phonosurgery Implants for Vocal Cord Medialization.	Do.
Biocompatibility of Materials in ENT Implants.	Do.

Title/Topic of Document	Contact
Endoscope Sheaths.	Do.
Body Composition Analyzers.	Do.
Hemodialysis Blood Access Devices (Level 2).	Do.
Blood Lines for Hemodialysis (Level 2).	Do.
Nasogastric Feeding Tubes (Level 2).	Do.
In Vivo Devices for the Detection of Cervical Cancer and Its Precursors: IDE.	Do.
Intrapartum Fetal Pulse Oximeters—IDE/PMA.	Do.
Thermal Endometrial Ablation Systems—IDE/PMA.	Do.
Radiation Therapy Treatment Planning.	Do.
Linear Accelerator.	Do.
Ultrasound Coupling Gel.	Do.
Radionuclide Dose Calibrator.	Do.
Ultrasound Transducer Probe Covers.	Do.
Ultrasound Bone Sonometers.	Do.
Bone Densitometry Device Labeling.	Do.
Emission Computed Tomography System.	Do.
Nuclear Tomography.	Do.
Electrohydraulic Lithotripters.	Do.
Extracorporeal Shockwave Lithotripters.	Do.
Neonatal Incubators and Neonatal Transport Incubators.	Von Nakayama, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–8913.
Spinal Assemblies (IDE's).	Sammie Niver, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2036.
Ophthalmic Camera.	Deborah L. Falls, Center for Devices and Radiological Health, Food and Drug Administration (HFZ–460), 5600 Fishers Lane, Rockville, MD 20857, 301–594–2205.
Keratome.	Do.
Refractive Implants.	Do.
Intraocular Lens Delivery Systems.	Do.
Accountability Analysis for Ophthalmic Devices.	Do.
Keratoprosthesis.	Do.
Glaucoma Drainage.	Do.
Nonprescription Sunglasses.	Do.
Patient Labeling Guidance (Level 1).	Paula G. Silberberg, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1217.
Human Factors Data To Be Submitted in Premarket Submissions (Level 1).	Ronald D. Kaye, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3265.
Questions and Answers About the Mammography Quality Standards Act Final Regulations (Level 1).	Kathleen M. Sheridan, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3275.
Search Engine to Use With Guidance Documents Developed for Mammography Quality Standards Act (Level 2).	Do.
Guidance for Additional Mammography Review (AMR).	Do.
Guidance for Patient Notification Under Mammography Quality Standards Act.	Do.
MDR Reporting for Manufacturers—Revision.	Thomas E. Cardamone, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0806, ext. 117.
MDR A Brief Overview—Revision of Archived Document.	Do.
Registration and Listing Instructions—Revision.	Do.
Registration and Listing Manual—Revision of Archived.	Do.
Immunotoxicity Testing.	John J. Langone, Center for Devices and Radiological Health (HFZ–113), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7132.
Testing for Infant Apnea Monitors (draft).	Jeffrey L. Silberberg, Center for Devices and Radiological Health (HFZ–141), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2536, ext. 15.
Identification and Evaluation of Candidate Consensus Standards Recognition.	Harvey Rudolph, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4777.
Guidance to Manufacturers for the Development of Postmarket Surveillance Plans Required Under Section 522 of the Federal Food, Drug, and Cosmetic Act (immediately in effect).	Laura A. Alonge, Center for Devices and Radiological Health (HFZ–543), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–0648.
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements (draft).	Do.

Title/Topic of Document	Contact
Reportability of Incidents Associated With the Use of Endosseous Implants (final).	Do.
Reportability of Incidents Associated With the Use of External Defibrillators (final).	Do.
MDR Questions and Answers.	Do.
Reportability of Incidents Associated With the Use of Implants.	Do.
Reuse of Medical Devices.	Do.
Statistical Guidance for Clinical Trials of Nondiagnostic Devices (revised).	Do.
Statistical Guidance for Clinical Trials of Diagnostic Devices.	Do.
Statistical Guidance on Bayesian Methods in Medical Device Clinical Trials.	Do.
Guidance for MDR Analysts on Adverse Event Report Review.	Do.
Guidance on MDR Prioritization.	Do.
Guidance for Reviewers of Postmarket Surveillance Submissions.	Do.

IV. Center for Drugs Evaluation and Research (CDER)

Title/Topic of Document	Contact
CATEGORY—ADVERTISING	
Accelerated Approval Products: Submission of Promotional Materials.	Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–5400.
Advertising and Labeling of Treatment IND Protocols.	Do.
Anti-Infective Human Drug and Biological Products Advertising and Promotional Labeling.	Do.
Comparative Claims in Advertising and Labeling.	Do.
Fair Balance.	Do.
Healthcare Economic Information.	Do.
Health Related Quality of Life Claims.	Do.
Infomercials.	Do.
Promotion at International Meetings.	Do.
Promotion of Investigational Products.	Do.
Promotion of Medical Products on the Internet.	Do.
Proprietary (Brand) Name and Established (Generic) Name Placement, Size, and Prominence in Advertising and Promotional Labeling.	Do.
Providing Electronic Submissions to the Division of Drug Marketing, Advertising, and Communications.	Do.
CATEGORY—BIOPHARMACEUTICS	
Albuterol Inhalation Aerosols; Revision.	Do.
Bioavailability/Bioequivalence Studies for NDA's and ANDA's-Orally Administered Drugs.	Do.
Bioanalytical Methods Validation: Bioavailability and Bioequivalence Studies Based on Drug or Metabolites Assay in a Biological Matrix.	Do.
Conjugated Estrogens Tablets; Revision.	Do.
In Vivo Pharmacokinetics and Bioavailability Studies and In Vitro Dissolution Testing for Levothyroxine Sodium Tablets.	Do.
Nasal Inhalation Aerosols and Metered Dose Spray Pumps for Local Action.	Do.
Oral Inhalation Drug Products for Local Action, MDI's, DPI's, and Inhalation Solutions.	Do.
Pharmacokinetics Metrics for Bioavailability/Bioequivalence.	Do.
Waiver of In Vivo Bioequivalence Studies for Immediate Release Solid Oral Dosage Forms.	Do.
CATEGORY—CHEMISTRY	
Bulk Actives Postapproval Changes (BAC PAK I). Postapproval CMC Changes Prior to the Final Intermediate.	Do.
Bulk Actives Postapproval Changes (BAC PAK II) Bulk Actives Postapproval Changes, Postapproval Changes From the Final Intermediate to the Drug Substance.	Do.
Botanical Drug Products.	Do.
Changes to an Approved NDA or ANDA Description (21 CFR 314.70; revisions).	Do.

Title/Topic of Document	Contact
Content and Format of IND's for Phases 2 and 3 Studies of New Drugs Including Well-Characterized, Therapeutic, Biotechnology-Derived Products.	Do.
Drug Master Files; General Content and Format.	Do.
Environmental Assessment Submissions; Revision.	Do.
Formal Meetings With CDER/CBER on Chemistry, Manufacturing and Controls Information for IND Studies, Including on Specified Therapeutic Biotechnology-Derived Products.	Do.
SUPAC Semisolids, Manufacturing Equipment Addendum.	Do.
SUPAC Transdermal Systems, Manufacturing Equipment Addendum.	Do.
Methods Validation.	Do.
Monoclonal Antibodies Used as Reagents in Drug Manufacturing, Recommendations on Tests and Specifications.	Do.
NDA's: Impurities in Drug Substances.	Do.
Postapproval Changes for Sterile Aqueous Solutions.	Do.
Proprietary and Established Drug Names.	Do.
Provides Recommendation Regarding Submission of Information for Drug Products Containing Cyclodextrin.	Do.
Submission of Chemistry and Biopharmaceutical Information for Liposomal and Lipid-Complexed Drug Products.	Do.
Submission of Chemistry Information on Chiral Drugs.	Do.
Submission of Chemistry, Manufacturing, and Controls Documentation for Inhalation Drug Products: MDI's and DPI's.	Do.
Submission of Documentation for Antibiotics and Other Cellular Metabolites Produced by Microorganisms Modified by the Use of Recombinant DNA Technology.	Do.
Submitting Manufacturing and Quality Control Information With IND's, NDA's, ANDA's, and AADA's.	Do.
SUPAC Immediate Release; Revision.	Do.
SUPAC Transdermal Systems.	Do.
CATEGORY—CLINICAL ANTIMICROBIAL	
Acute Bacterial Arthritis; Developing Antimicrobials for Treatment.	Do.
Opportunistic Infections Related to Aids; Developing Antimicrobials for Treatment.	Do.
Sepsis/Septic Shock; Developing Antimicrobials for Treatment.	Do.
Surgical Prophylaxis; Developing Antimicrobials for Treatment.	Do.
Antifungal Agents; Developing Antimicrobials for Treatment.	Do.
Antimicrobacterial Agents; Developing Antimicrobials for Treatment.	Do.
Antiparasitic Agents; Developing Antimicrobials for Treatment.	Do.
Antiviral Agents; Developing Antimicrobials for Treatment.	Do.
Complicated Intra-Abdominal Infections; Developing Antimicrobials for Treatment.	Do.
Dermatological Surgical Scrubs; Developing Antimicrobials for Treatment.	Do.
Endocarditis; Developing Antimicrobials for Treatment.	Do.
Gynecologic Infections (Except Sexually Transmitted Disease and Pelvic Inflammatory Disease); Developing Antimicrobials for Treatment.	Do.
Helicobacter Pylori Infections; Developing Antimicrobials for Treatment.	Do.
Immunologic/Transplant Agents; Developing Antimicrobials for Treatment.	Do.
Osteomyelitis (Acute and Chronic); Developing Antimicrobials for Treatment.	Do.
Pelvic Inflammatory Disease; Developing Antimicrobials for Treatment.	Do.
Uncomplicated Intra-Abdominal Infections; Developing Antimicrobials for Treatment.	Do.
CATEGORY—CLINICAL MEDICAL	
Assessment of Reproductivity and Developmental Toxicity.	Do.
Clinical Development of Drugs for the Treatment of Allergic Rhinitis.	Do.
Clinical Development of Drugs for the Treatment of Chronic Sinusitis (other than antimicrobials).	Do.
Clinical Development Programs for MDI and DPI Drug Products.	Do.
Clinical Evaluation of Lipid-Altering Agents.	Do.
Clinical Evaluation of Potential ECG Effects of New Antihistamines.	Do.
Clinical Evaluation of Weight-Control Drugs.	Do.
Clinical Guidance for Estrogen/Progestin Containing Drug Products.	Do.
Clinical Guidance for Estrogen Drug Products.	Do.
Clinical Trials: Hormone Replacement Therapy in Women.	Do.
Content and Format for ''Geriatric Use'' Supplemental Applications.	Do.

Title/Topic of Document	Contact
Content and Format of the Adverse Reactions Section of the Labeling.	Do.
Content and Format of the Clinical Studies Section of Labeling for Human Drugs and Biologics.	Do.
Content and Review of Applications.	Do.
Developing Clinical Programs for Developing Drugs, Devices, and Biological Products for the Treatment of Systemic Lupus Erythematosus.	Do.
Development of Medical Imaging Products.	Do.
Establishing Pregnancy Registries.	Do.
Evaluation of Growth Effects of Orally Inhaled and Intranasal Corticosteroids in Asthma and Allergic Rhinitis.	Do.
Evaluation of New Treatments for Diabetes Mellitus.	Do.
Fast Onset for Analgesic (Rx) Products.	Do.
Fast Track Products: Policies and Procedures.	Do.
General Guidance for Eye Allergy Relief/Allergic Conjunctivitis Clinical Trials.	Do.
General Guidance for Glaucoma/IOP Lowering Clinical Trials.	Do.
GRP (Good Review Practices) Guidance: Content and Format of the Clinical Review of a Marketing Application (will be developed in parts).	Do.
GRP Guidance: Safety Review of Clinical Data (1st part of the GRP guidance).	Do.
General Considerations for Pediatric Pharmacokinetic Studies.	Do.
Guidelines for the Clinical Evaluation of Motility Modifying Drugs.	Do.
Guidelines for the Clinical Evaluation of Drugs for Crohn's Disease.	Do.
Guidelines for the Clinical Evaluation of Drugs for Ulcerative Colitis.	Do.
Helicobacter Pylori Ulcers.	Do.
Human Pregnancy Outcome Data.	Do.
Lupus.	Do.
NSAID Ulcers.	Do.
NSAID GI–Sparing Study Guidance.	Do.
Other Ulcers.	Do.
Pain Claim Structure; Acute Versus Chronic Conditions.	Do.
Pediatric Clinical Trial Design.	Do.
Performance of Clinical Trials for Gastroduodenal Ulcer Disease.	Do.
Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products.	Do.
Post Cataract Inflammation Studies.	Do.
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis.	Do.
Preclinical Development of Inhalation Drugs for Indications in Children Two Years of Age or Less.	Do.
Psoriasis Therapies.	Do.
Uveitis Studies.	Do.
Removal of a Preservative to Create a Preservative Free Ophthalmic Solution.	Do.
Submission of Debarment Certification Statements and Other Information Under The Generic Drug Enforcement Act of 1992.	Do.
Vaginal Contraceptive Drug Development.	Do.
Wound Care Products.	Do.
CATEGORY—CLINICAL PHARMACOLOGY	
Clinical Pharmacology and Biopharmaceutical Data for Human Drug Products.	Do.
Failed Bioequivalence.	Do.
Format and Content of the Clinical Pharmacology Section of Prescription Drug Product Labeling.	Do.
Immediate Release to Modified Release Dosage Forms.	Do.
In Vitro Drug Metabolism/Drug Interaction.	Do.
In Vivo Drug Metabolism/Drug Interaction.	Do.
Pharmacokinetics and Pharmacodynamics.	Do.
Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling.	Do.
Submission of Expanded Synopses for Clinical Pharmacology and Biopharmaceutics Studies.	Do.
CATEGORY—COMPLIANCE	
Civil Money Penalty Cases Under the Prescription Drug Marketing Act (PDMA).	Do.
Development, Implementation, and Maintenance of a Sample Security and Audit System Under the Prescription Drug and Marketing Act (PDMA).	Do.

Title/Topic of Document	Contact
Investigating Out of Specification (OOS) Results for Pharmaceutical Production.	Do.
First Party Audit.	Do.
Plant Readiness; Preapproval Good Manufacturing Practices Inspections.	Do.
Maintaining Adequate and Accurate Records During Clinical Investigations.	Do.
National Drug Code Number and Drug Product Labels.	Do.
Sterile Drug Products Produced by Aseptic Processing; Revision.	Do.
Waiver of Informed Consent Requirements for Emergency Care Research.	Do.
CATEGORY—GENERICS	
Changes in Labeling of ANDA's Subsequent to Revisions in the Reference Listed Drug Labeling.	Do.
Clindamycin Intravenous Labeling.	Do.
Office of Generic Drugs, Policy on Inactive Ingredients.	Do.
Organization of an Abbreviated New Drug Application; Revision.	Do.
Product Variations Within the Same ANDA.	Do.
Submitting Documentation to Abbreviated Drug Applications for Degradation Products in Drug Products.	Do.
Variations in Drug Product That May Be Included in a Single Application.	Do.
CATEGORY—INFORMATION TECHNOLOGY.	
Computerized Systems Used in Clinical Trials.	Do.
Electronic Submission of Adverse Reaction Data Via Physical Media.	Do.
Providing Regulatory Submissions in Electronic Format (will be completed in parts—the part on the NDA published 9/97).	Do.
Standards for Electronic Safety Data Submissions.	Do.
CATEGORY—LABELING	
Labeling for Combined Oral Contraceptives, Physician Labeling and Instructions for Use.	Do.
Labeling Guidance for Noncontraceptive Estrogen Drug Products.	Do.
Placing the Therapeutic Equivalency Rating on Prescription Drug Labels.	Do.
Topical Corticosteroid Class Labeling.	Do.
CATEGORY—OVER THE COUNTER	
Points to Consider for OTC Actual Use Studies; Revision.	Do.
CATEGORY—PHARMACOLOGY TOXICOLOGY.	
Statistical Aspects of Design, Analysis, and Interpretation of Animal Carcinogenicity Studies.	Do.
Testing for Photocarcinogenesis.	Do.
CATEGORY—PROCEDURAL	
Appealing Center Regulatory and Scientific Decisions.	Do.
Clarify Requirements for Submission of Supplements.	Do.
Formal Meetings Between CDER and Sponsors and Applicants for PDUFA Products.	Do.
Major Dispute Resolution Involving PDUFA Covered Products.	Do.
Regulatory Considerations for section 505(b)(2) of the Federal Food, Drug, and Cosmetict Act Applications.	Do.
Scientific Advisory Panels.	Do.
Special Protocols for the Content and Review of Applications.	Do.
CATEGORY—USER FEES	
Product, Establishment, and Application Fees, Issues and Resolutions.	Do.

V. Center for Veterinary Medicine (CVM)

Title/Topic of Document	Contact
CATEGORY—FOOD ADDITIVES	
Data Requirements for Demonstrating a Food Additive Can Control *Salmonella* in Feed.	George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651.
Data Requirements for Demonstrating a Food Additive Binds Mycotoxins.	Do.
CATEGORY—MICROBIAL PRODUCTS IN FEEDS	

Title/Topic of Document	Contact
Compliance Policy Guide About Microbial Products.	Do.
CATEGORY—HUMAN FOOD SAFETY	
Disposition of Animals Used in Research and in the Manufacture of Biomedical Products.	Linda R. Tollefson or Margaret Miller, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6644 or 301–594–1620.
Animal Medicinal Drug Use Clarification Act Safe Levels Guidance.	Do.
Metabolism Guidance.	Do.
Threshold Assessment Guidance.	Do.
Tolerance Guidance.	Do.
Microbiological Tolerances/Withdrawal Times Guidance.	Do.
Risk Analysis Guidance.	Do.
Animal Drug Availability Act Import Tolerance Policy.	Do.
Microbiological Testing of Antimicrobial Drug Residues in Food Guidance.	Do.
CATEGORY—SUBSTANTIAL EVIDENCE	
One versus Multiple Adequate and Well-Controlled Studies/Field Studies.	Herman M. Schoenemann, III, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0220.
Choosing Study Parameters (Direct, Surrogate).	Do.
Inferential Value for Conditions, Animal, and Time.	Do.
Use of Published Studies.	Do.
Use of Foreign Studies.	Do.
Number and Types of Studies (By Drug Class) Needed to Demonstrate Effectiveness.	Do.
Principles of Statistical Analysis Relevant to Regulatory Studies.	Do.
Combination New Animal Drugs.	Do.
Positive Control.	Do.
Dose or Dose Range Characterization.	Do.
CATEGORY—MANUFACTURING CHEMISTRY	
Stability Guidance.	William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0678.
Guidance on Chemistry and Manufacturing Changes and Good Manufacturing Practices Requirements for Minor Use/Minor Species Drug Products.	Do.
CATEGORY—TARGET ANIMAL SAFETY AND EFFECTIVENESS STUDIES FOR PRODUCTION DRUGS.	
Anticoccidial in Poultry Guidance.	Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1620.
CATEGORY—TARGET ANIMAL SAFETY AND EFFECTIVENESS STUDIES FOR THERAPEUTIC DRUG USES	
Guidance on Recommended Content and Format for Investigational New Animal Drug Data Submissions for HFV–110.	Do.
Nonsteroidal Anti-inflammatory Drug Guidance.	Do.
Competitive Exclusion Guidance.	Do.
CATEGORY—OTHER PREMARKETING	
Bioequivalence of Continual Release Drugs Such as Implant Drugs.	Do.
Correlation of In Vitro Dissolution and In Vivo Bioavailability.	Do.
FOI Summary Guidance.	Do.
CATEGORY—STATISTICS	
Add Log C I Guidance to Bioequivalence Guidance.	Anna B. Nevius, Center for Veterinary Medicine (HFV–124), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0218.
General Statistical Procedures for Designing and Analyzing Research.	Do.
Alternative Methods.	Do.

VI. Office of Regulatory Affairs (ORA)

Title/Topic of Document	Contact
CATEGORY—COMPLIANCE POLICY GUIDES	
Compliance Policy Guide, Chapter 1, Sec. 140.100, Seizure of Books That Constitute Misleading Labeling (CPG 7153.13).	JoAnne C. Marrone, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1242.

Title/Topic of Document	Contact
Compliance Policy Guide, Chapter 5, Sec. 540.400, Shrimp—Fresh or Frozen, Raw, Headless, Peeled or Breaded—Adulteration Involving Decomposition (CPG 7108.11).	MaryLynn A. Datoc, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0413.
Compliance Policy Guide, Chapter 5, Sec. 540.650, Sale-Cured, Air-Dried, Uneviscerated Fish (e.g., ''Kapchunka'') (CPG 7108.17).	Do.
Compliance Policy Guide, Chapter 6, Sec. 675.400, Rendered Animal Feed Ingredients (CPG 7126.24).	Barbara A. Rodgers, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0417.
Compliance Policy Guide: Evaluation and Processing of Post Donation Reports.	JoAnne A. Marrone, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1242.
Compliance Policy Guide: Summary of Records Accompanying Human Tissue for Transplantation.	Do.
Compliance Policy Guide: Foods Contaminated With Hard or Sharp Foreign Objects.	MaryLynn A. Datoc.
CATEGORY—COMPLIANCE PROGRAMS; BIORESEARCH MONITORING	
Compliance Program 7348.808,Bioresearch Monitoring; Good Laboratory Practices (GLP) (Nonclinical).	James F. McCormack, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0425.
Food Laboratory Practice Program (Nonclinical Laboratories) 7348.808A: EPA Data Audit Inspections.	Do.
Compliance Program 7348.810: Sponsors, Contract Research Organizations and Monitors.	Do.
Compliance Program 7348.809: Bioresearch Monitoring; Institutional Review Board.	Do.
Compliance Program 7348.811: Bioresearch Monitoring; Clinical Investigations.	Do.
CATEGORY—INSPECTION GUIDES	
Guide to Inspections of Source Plasma Establishments.	Elizabeth A. Waltrip, Division of Emergency and Investigational Operations (HFC–132), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 301–827–5662.
CATEGORY—LABORATORY PROCEDURES MANUAL	
Laboratory Procedures Manual, Chapter 1, Sample Accountability.	Leonard Valenti, Division of Field Science (HFC–140), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7103.
Laboratory Procedures Manual, Chapter 10, Research Guidelines.	Lawrence D'Hoostelaere, Division of Field Science (HFC–140), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3320.

Dated: October 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29387 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA AIDS Advisory Committee CARE Act Reauthorization Workgroup; Meeting

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of public meeting and opportunity to provide written comments.

SUMMARY: On December 2, 1997, the HRSA AIDS Advisory Committee (HAAC) established the Ryan White CARE Act Reauthorization Workgroup. The workgroup is seeking public input about future HIV/AIDS care program directions including issues related to the second reauthorization of the Ryan White CARE Act. The HAAC will subsequently submit a set of formal recommendations relating to future program directions and reauthorization issues to the HRSA Administrator.

DATES: A public meeting will be held on December 3–4, 1998, from 8:30 a.m. to 5 p.m., to obtain public input into future program directions and issues related to the reauthorization of the Ryan White CARE Act of 1990 as amended by the Ryan White CARE Act Amendments of 1996 (Pub. L. 104–146). To be assured of consideration for this public session, written comments should be postmarked no later than December 16, 1998, and should contain the name, address, telephone and fax numbers and any organizational affiliation of the persons requesting to provide a written statement. The public meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC, 20008; phone (202) 234–0700; FAX (202) 265–7972.

ADDRESSES: Written comments should be sent to the HRSA AIDS Advisory Committee, c/o HRSA HIV/AIDS Bureau, Office of Policy and Program Development, Attention: Caitlin Ryan, Parklawn Building, 5600 Fishers Lane, Room 7–20, Rockville, Maryland 20857.

All requests for making oral comments will be made at the meeting on December 3rd and 4th. Depending on the number of requests to present oral comments, it may be necessary to limit the length of time for each presenter.

SUPPLEMENTARY INFORMATION: We are particularly interested in comments which address the following issues:

1. Extent to which CARE Act programs are enrolling underserved and vulnerable populations.

2. Extent to which CARE Act programs are providing clients with care whose quality meets or exceeds Public Health Service treatment guidelines and other care standards.

3. Extent to which CARE Act programs are providing services that remove barriers to primary care access

so as to ensure clients enter into and remain in care.

4. Extent to which the CARE Act programs are reducing HIV-related mortality and morbidity.

5. Extent to which CARE Act programs are adapting to a changing service and cost environment.

6. Structure of the CARE Act.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Brady, HIV/AIDS Bureau, Division of Training and Technical Assistance, (301) 443–4156.

Dated: October 28, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–29331 Filed 11–2–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Advisory Committee on Water Information; Notice of Rechartering

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Advisory Committee on Water Information. The purpose of the Committee shall be to represent the interests of water-resources professionals and other water-information users in advising the Federal Governments, through the U.S. Department of the Interior, on activities and plans related to water-information programs and the effectiveness of those programs in meeting the Nation's needs.

Further information regarding the Committee may be obtained from the Chief Hydrologist, U.S. Geological Survey, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

The certification of renewal is published below.

Certification

I hereby certify that renewing the Advisory Committee on Water Information is in the public interest. The public interests are related to the performance of duties imposed on the U.S. Department of the Interior by 43 U.S.C. 31 (1988), 43 U.S.C. 1457 (1988), by language in the annual U.S. Department of the Interior Appropriations Acts; and by Office of Management and Budget Memorandum No. 92–01.

Dated: October 26, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–29312 Filed 11–2–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submission to OMB for Reinstatement Under Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice announces that an information collection request, OMB Control Number 1076–0135, ''Public Law 102–477 Reporting,'' was submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for review and reinstatement under 5 CFR 1320.10. The first notice requesting comments about the collection was published in the **Federal Register** on February 24, 1998 (63 FR 9240–9241).

DATES: Written comments must be received on or before December 3, 1998.

ADDRESSES: Written comments should be sent to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Department of the Interior, Docket Library, Room 10102, 725 17th Street NW, Washington, D.C. 20503. A copy should be sent to Lynn Forcia, Office of Economic Development, Bureau of Indian Affairs, 1849 C Street, NW, Mail Stop 4640–MIB, Washington, D.C. 20240. OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or additional copies of the information collection instructions and the February 22, 1998 **Federal Register** should be directed to Lynn Forcia, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS 4640–MIB, Washington, D.C. 20240 and Telephone: 202–219–5270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Title: A Reporting System for the P.L. 102–477 Demonstration Project, expired on March 31, 1998. This is a request for reinstatement of a slightly modified previously approved information collection request.

I. Abstract: The information collection is needed to document satisfactory compliance with statutory requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally-funded employment, training and related services programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor and the Department of Health and Human Services. The Bureau of Indian Affairs is statutorily required to serve as the lead agency. Section 11 of this Act requires that the Secretary of the Interior make available a single universal report format which shall be used by a tribal government to report on integrated activities and expenditures undertaken. The Bureau of Indian Affairs shares the information collected from these reports with the Department of Labor and Department of Health and Human Services.

II. Method of Collection: Tribal governments voluntarily participating in Public Law 102–477 are required to annually complete two single page, one-sided report forms and one narrative report, which includes four pages of instructions. They replace 166 pages of instructions and applications representing three different agencies and twelve different funded but related programs. We estimate a 95 percent reduction in reporting which is consistent with the Paperwork Reduction Act and goals of the National Performance Review. The statistical and narrative report will be used to demonstrate how well a plan was executed in comparison to proposed goals. The financial status report will be used to track cash flow, and will allow an analysis of activities versus expenditures and expenditures to approved budget. It is a slightly modified SF–269-A (short form).

These report forms and narrative are limited but satisfy the Department of Health and Human Services, Department of Labor and the Department of the Interior. They reduce the burden on tribal governments by consolidating data collection for employment, training, education, child care and related service programs. The forms were developed by a partnership of tribes and representatives of all three Federal agencies, to standardize terms and definitions, eliminate duplication and reduce frequency of collection.

Respondents: Tribes participating in Public Law 102–477 will report annually. Currently, there are 22 grantees participating in the program.

Burden: We estimate that completion of the reporting requirements will require 10 hours per year to complete for each grantee, times 22 grants equals 220 burden hours.

Public Comments and Responses

All comments were considered in preparing BIA's response.

The desk officer for Department of Labor at OMB verbally recommended that we add the following questions to the reporting forms in order to provide three additional items of information for the Department of Labor's new Welfare to Work program. Add to the Program Statistical report form:

1. ''Welfare to work recipients entered unsubsidized employment.''

2. ''Placements with duration of 180 days or more.''

Add to the Narrative portion of the report, one sentence:

3. ''The narrative should show the extent of participants in any Welfare to Work activities, e.g., the number of participants and what activities were included.''

The P.L. 102–477 Tribal Work Group formed a subcommittee to review all P.L. 102–477 report forms including the OMB requested additions. The subcommittee included representatives from the Central Council of Tlingit and Haida Indians, Kodiak Area Native Association, the Shoshone Bannock Tribes, the Cook Inlet Tribal Council, the Sisseton-Wahpeton Sioux Tribe and the Indian and Native American Employment and Training Coalition. The subcommittee responded to the recommendations from the Office of Management and Budget as follows. To the Program Statistical report form:

1. In the program consolidation authorized under P.L. 102–477, grantees no longer identify participants in each activity separately because the funding sources are not identified for each participant. Therefore, the subcommittee recommendation was added: *''Long-term TANF recipients entered unsubsidized employment.''*

2. The subcommittee stated that tracking participants for 180 days is very costly in terms of additional time and expense that could otherwise be spent toward finding unsubsidized employment for individuals. Therefore, the subcommittee recommended that grantees track clients for 90 days instead of 180 days. Tracking participants for 90 days would also be consistent with existing Department of Labor, JTPA requirements and participant eligibility for services. Therefore, we have decided to add the following question to the form: *''Placements with duration of 90 days or more.''*

3. The subcommittee agreed with the Office of Management and Budget that it was appropriate to add one sentence to the narrative instruction, and is as follows: *''The narrative should show the extent of participation in any welfare to work activities, e.g., the number of participants and the services such as job readiness, supportive services, and any post employment services provided to place long-term welfare recipients into employment and the success of such services.''*

The Bureau of Indian Affairs also received comments from five P.L. 102–477 grantees and one other interested party, stating that the existing format has allowed tribes to spend more time providing services to clients and less time completing report forms. Grantees stated that initiation of a P.L. 102–477 program resulted in the integration of several programs and resulted in the elimination of distinction between related tribal employment and training participants based on the source of funds for the services. The grantees stated they wanted no additional information collection elements and requested a face-to-face meeting with OMB prior to making any changes to the existing forms. We did not receive any written comments from any of the other participating Federal agencies. We have incorporated the additions recommended by the P.L. 102–477 subcommittee because we believe the additional information is necessary to provide the Department of Labor and the Office of Management and Budget with the information necessary to adequately manage and evaluate the Welfare to Work program. The collection of the additional information is the minimum amount of information needed to accomplish this goal and to limit information collection and reporting requirements for grantee tribes, many with limited resources.

Dated: October 23, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–29313 Filed 11–2–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Isle Royale National Park

AGENCY: National Park Service.

ACTION: Notice of Availability of the Final General Management Plan/ Environmental Impact Statement for Isle Royale National Park, Keweenaw County, Michigan.

SUMMARY: Pursuant to Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service announces the release of the Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Isle Royale National Park.

DATES: The required no-action period for review of the Final GMP/EIS will end 30 days after the Environmental Protection Agency has listed the availability of the document in the **Federal Register**. A record of decision will follow the no-action period.

FOR FURTHER INFORMATION CONTACT: Superintendent, Isle Royale National Park, 800 E. Lakeshore Drive, Houghton, Michigan 49931 or telephone: (906) 482–0984.

SUPPLEMENTARY INFORMATION: The Final GMP/EIS presents five alternatives for future management of Isle Royale National Park. The draft plan was on review in April and May 1998. This final plan incorporates comments made during that public review. Copies of the Final GMP/EIS will be available at the following locations: Office of Public Affairs, National Park Service, 1849 C Street, NW, Washington, DC 20013; Department of Interior Natural Resource Library, 1849 C Street, NW, Washington, DC 20013; National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102; and Isle Royale National Park, 800 E. Lakeshore Drive, Houghton, Michigan 49931.

Dated: October 8, 1998.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 98–29364 Filed 11–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 24, 1998. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written

comments should be submitted by November 18, 1998.

Paul R. Lusignan,

Acting Keeper of the National Register.

COLORADO

Denver County

Kopper's Hotel and Saloon, 1215–1219 20th St., Denver, 98001378

FLORIDA

Volusia County

South Peninsula Historic District (Daytona Beach MPS), Roughly the Daytona Beach Penisula between the Atlantic Ocean and Halifax R., Daytona Beach, 98001379

LOUISIANA

Beauregard Parish

First Street School, 500 W. First St., DeRidder, 98001380

MASSACHUSETTS

Barnstable County

Avant House, MA 130 at Mill Pond, Mashpee, 98001382
Old Indian Meeting House, 410 Meetinghouse Rd., Mashpee, 98001383

Suffolk County

Baker Congregational Church, 760 Saratoga St., Boston, 98001381

NEW YORK

Allegany County

Caneadea Bridge, Cty. Rd. over Genesee R., Caneadea, 98001388

Broome County

Trinity Memorial Church (Historic Churches of the Episcopal Diocese of Central New York MPS), 44 Main St., Binghamton, 98001389

Cattaraugus County

Conklin Mountain House, 304 E. State St., Olean, 98001386

Chemung County

Emmanuel Episcopal Church, 380 Pennsylvania Ave., Elmira, 98001395
Pentacostal Holy Temple Church of Jesus Christ, 351 Division St., Elmira, 98001387

Niagara County

Oliver Thomas House, 175 Locust St., Lockport, 98001390

Orange County

Village of Monroe Historic District, Roughly bounded by Lake St., Carpenter Place, Clark St., Monroe Race Track Site, Ramapo St., and Oakland Ave., Monroe, 98001391

Otsego County

Roseboom Historic District, Roughly along NY 166, NY 165, Beaver, John Deer and Gage Rds., Roseboom, 98001394

Sullivan County

Aqudas Achim Synagogue, Rock Ave., Livingston Manor, 98001404
Mamakating Park Historic District, Roughly along Park Rd, Columbian Rd., and Mamakating Ave., Wurtsboro vicinity, 98001393

Ulster County

Olive and Hurley Old School Baptist Church, NY 28, jct. with NY 30, Shokan, 98001392

NORTH CAROLINA

Mitchell County

Dellinger Mill, S side of Cane Creek Rd., just W of jct. with NC 1239, Hawk vicinity, 98001385

OHIO

Lorain County

Oberlin Gas Lighting Company Gasholder House, 291 S. Main St., Oberlin, 98001397

Lucas County

Woodlawn Cemetery, 1502 W. Central Ave., Toledo, 98001396

Tuscarawas County

Slingluff, Dr. Joseph, House, 606 N. Wooster Ave., Dover, 98001384

SOUTH DAKOTA

Beadle County

Bowden, Faye, House—Agnus Saunders (Lustron Houses in South Dakota MPS), 669 Dakota Ave. N., Huron, 98001401
Chicago and North Western Roundhouse (Historic Railroads of South Dakota MPS), N of First St., Huron, 98001411
Maxon, Margaret and Vernon, House (Lustron Houses in South Dakota MPS), 1305 McDonald St., Huron, 98001409

Butte County

Butte County Courthouse amd Historic Jail Building (County Courthouses of South Dakota MPS), 839 5th Ave., Belle Fourche, 98001398

Clay County

Sample—Lindblaum House (Lustron Houses in South Dakota MPS), 410 Idaho St., Wakonda, 98001405

Davison County

Mitchell Lustron Historic District (LustronHouses in South Dakota MPS), Roughly along Vincent Place, from Miller Ave. to Mitchell Blvd., Mitchell, 98001402

Gregory County

Gregory County State Bank, Main St., jct with Randall St., Fairfax, 98001399

Hughes County

Chicago and North Western Railroad Bridge (Historic Railroads of South Dakota MPS), N of US 14/83 over the Missouri R., Pierre vicinity, 98001412
Hansen, Peter, House (Lustron Houses in South Dakota MPS), 1123 E. Capitol St., Pierre, 98001410

Lawrence County

Lead Historic District (Boundary Increase), SW of the commercial district of Lead, Lead, 98001413

Minnehaha County

Hayward, Orlan A., House (Lustron Houses in South Dakota MPS), 1509 S. Glendale, Sioux Falls, 98001406
Reynolds, Grant J., House (Lustron Houses in South Dakota MPS), 800 S. Hawthorne St., Sioux Falls, 98001400

Pennington County

Cassidy House (Lustron Houses in South Dakota MPS), 4121 Canyon Lake Rd., Rapid City, 98001407
Nelson, Maurice, House (Lustron Houses in South Dakota MPS), 101 E. Quincy St., Rapid City, 98001403

Spink County

Opitz, Edbert and Josie, House (Lustron Houses in South Dakota MPS), 204 E. 2nd St., Redfield, 98001408

TEXAS

Caldwell County

Lockhart Vocational High School (Rosenwald School Building Progam in Texas MPS), 1104 E. Market St., Lockhart, 98001416

Guadalupe County

Sweet Home Vocational and Agricultural High School (Rosenwald School Building Program in Texas MPS), 10 mi. S of Seguin on Sweet Home Rd., Seguin vicinity, 98001417

Tarrant County

Montgomery Ward and Company Building, 801 Grove St., Fort Worth, 98001415

Taylor County

Bankhead Highway Historic District, Approx. 4 mi. sections of US 80 contained within Taylor Cty., Abilene vicinity, 98001414

WASHINGTON

King County

Issaquah Sportsmen's Club, 23600 SE Evans St., Issaquah, 98001419

Stevens County

Collins Building, S 202 Main, Colville, 98001418

A REQUEST for a REMOVAL has been made for the following resource:

WASHINGTON

Skagit County

Curtis Wharf, Jct. of O. Ave. And Second St., Anacortes, 87001941

[FR Doc. 98–29365 Filed 11–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Air Products and Chemicals, Inc., et al.,* Civil Action No. 97–CV–

0674 (E.D. Pa), was lodged on October 23, 1998, with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States under Sections 107(a) and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a) and 9613(g), for reimbursement of response costs incurred by the U.S. Environmental Protection Agency (''EPA'') with respect to the Novak Sanitary Landfill Superfund Site in South Whitehall Township, Lehigh County, Pennsylvania. The consent decree also includes a covenant not to sue by the United States under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The consent decree obligates the Settling Defendants to pay a total of $1,035,931.72 to settle this action. This amount constitutes 87 percent of EPA's outstanding past costs incurred through January 9, 1998. The Settling Defendents remain potentially liable for all response costs incurred after January 9, 1998. The Owner Settling Defendant also has agreed to provide access to both EPA and private parties that are performing cleanup pursuant to an EPA administrative order for remedial design/remedial action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Air Products and Chemicals, Inc., et al.*, DOJ Ref. #90–11–2–976B. Commenters may request an opportunity for public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the office of the United States Attorney, 616 Chestnut Street, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA: and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $38.25 (25 cent per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 98–29400 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that on October 22, 1998, a proposed Consent Decree (exception two appendices which will be the subject of a motion for leave to file under seal) in *United States* v. *Caterpillar, Inc.*, Civil Action No. 98–2544 (HHK), was filed with the United States District Court for the District of Columbia. At the same time, (1) Caterpillar, Inc. (''Caterpillar'') and the California Air Resources Board (''CARB'') have concluded a related settlement agreement that resolves California claims similar to the federal claims addressed by this proposed Consent Decree; and (2) the United States filed similar settlements with six other manufacturers of motor vehicle diesel engines, notice of which is also being published at this time.

The United States has asserted in a civil complaint against Caterpillar under the Clean Air Act, as amended 42 U.S.C. 7401 *et seq.* (''the Act''), that Caterpillar sold, offered for sale, or introduced or delivered for introduction into commerce, certain heavy duty diesel engines that are equipped with computer software that alters fuel injection timing when the engines are in actual use, relative to the fuel injection timing used to control emissions of oxides of nitrogen (''NO_X'') on the emissions test (the Federal Test Procedure or ''FTP'') required by U.S. Environmental Protection Agency (''EPA'') regulations for the sale of motor vehicle engines in the United States. The United States alleges in its complaint that these computer strategies have an adverse effect on the engines' emission control system for NO_X, that they were not adequately disclosed to EPA, that they are emission-control defeat devices prohibited under the Act, and that these engines are not covered by an EPA Certificate of Conformity, as required by the Act for motor vehicle engines to be sold in the United States.

Under the proposed Consent Decree, Caterpillar has agreed to resolve the United States' claims by, among other things:

(1) Reducing emissions from heavy duty diesel engines and eliminating the strategies of concern in future production, in accordance with the schedule set forth in the proposed Decree. This includes a substantial reduction in emissions by the end of this year, and a requirement that Caterpillar achieve early compliance (by October 1, 2002) with the more stringent NO_X plus nonmethane hydrocarbon emission standard that would otherwise not apply (under current law) until January 1, 2004;

(2) Meeting Consent Decree emission limits both on the FTP and on a supplemental test called the EURO III test, which measures emissions under steady state conditions;

(3) Meeting ''emission surface limits'' and ''not-to-exceed'' limits that impose specific emissions limits in real-world operating conditions;

(4) Addressing emissions from engines previously sold and currently in use by developing and supplying dealers and independent rebuilders with Low NO_X Rebuild Kits, which would be used by engine rebuilders at the time of rebuild, and would reduce NO_X emissions in rebuilt engines; and

(5) Meeting certain emission limits for nonroad engines one year earlier than the law engines;

As additional injunctive relief Caterpillar also will spend up to $35 million to fund projects approved by EPA and CARB that are designed to reduce NO_X and PM emissions. Some of those projects are already specified in the Consent Decree. Others will be selected after the close of the public comment period following consideration of, and review and approval by the United States and CARB, of projects proposed by Caterpillar, including any ideas submitted by the public. Caterpillar may receive credit against a portion of this $35 million obligation in return for securing verifiable reductions in NO_X emissions not otherwise required by this Decree or other applicable law, but in no event will its obligation to fund projects be less then $25 million.

Finally, Caterpillar is required to pay $25 million of civil penalties, twenty-five percent of which will be paid to CARB as part of its parallel settlement with Caterpillar.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should

refer to *United States* v. *Caterpillar, Inc.*, Civil Action No. 98–2544 (HHK), D.J. Ref. 90–5–2–1–2255.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., N.W., Washington, D.C. 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, S.W., Washington, D.C. 20460; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3RD Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $34.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29405 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 22, 1998, a proposed Consent Decree (excepting two appendices which will be the subject of a motion for leave to file under seal) in *United States* v. *Cummins Engine Co.* Civil Action No. 98–2546 (HHK), was filed with the United States District Court for the District of Columbia. At the same time, (1) Cummins Engine Company (''Cummins'') and the California Air Resources Board (''CARB'') have concluded a related settlement agreement that resolves California claims similar to the federal claims addressed by this proposed Consent Decree; and (2) the United States filed similar settlements with six other manufacturers of motor vehicle diesel engines, notice of which is also being published at this time.

The United States has asserted in a civil complaint against Cummins under the Clean Air Act, as amended 42 U.S.C. 7401 *et seq.* (''the Act''), that Cummins sold, offered for sale, or introduced or delivered for introduction into commerce, certain heavy duty diesel engines that are equipped with computer software that alters fuel injection timing when the engines are in actual use, relative to the fuel injection timing used to control emissions of oxides of nitrogen (''NO_X'') on the emissions test (the Federal Test Procedure or ''FTP'') required by U.S. Environmental Protection Agency (''EPA'') regulations for the sale of motor vehicle engines in the United States. The United States alleges in its complaint that these computer strategies have an adverse effect on the engines' emission control system for NO_X, that they were not adequately disclosed to EPA, that they are emission-control defeat devices prohibited under the Act, and that these engines are not covered by an EPA Certificate of Conformity, as required by the Act for motor vehicle engines to be sold in the United States.

Under the proposed Consent Decree, Cummins has agreed to resolve the United States' claims by, among other things:

(1) Reducing emissions from heavy duty diesel engines and eliminating the strategies of concern in future production, in accordance with the schedule set forth in the proposed Decree. This includes a substantial reduction in emissions by the end of this year, and a requirement that Cummins achieve early compliance (by October 1, 2002) with the more stringent NO_X plus nonmethane hydrocarbon emission standard that would otherwise not apply (under current law) until January 1, 2004;

(2) Meeting Consent Decree emission limits both on the FTP and on a supplemental test called the EURO III test, which measures emissions under steady state conditions;

(3) Meeting ''emission surface limits'' and ''not-to-exceed'' limits that impose specific emissions limits in real-world operating conditions;

(4) Addressing emissions from engines previously sold and currently in use by developing and supplying dealers and independent rebuilders with Low NO_X Rebuilt Kids, which would be used by engine rebuilders at the time of rebuild, and would reduce NO_X emissions in rebuilt engines; and

(5) Meeting certain emission limits for nonroad engines one year earlier than the law requires;

(6) Conducting, in conjunction with Chrysler Corporation, a recall of certain medium heavy-duty pickup trucks, so that modifications may be made to the engine to reduce emissions.

As additional injunctive relief Cummins also will spend up to $35 million to fund projects approved by EPA and CARB that are designed to reduce NO_X and PM emissions. Some of those projects are already specified in the Consent Decree. Others will be selected after the close of the public comment period following consideration of, and review and approval by the United States and CARB, of projects proposed by Cummins, including any ideas submitted by the public. Cummins may receive credit against a portion of this $35 million obligation in return for securing verifiable reductions in NO_X emissions not otherwise required by this Decree or other applicable by law, but in no event will its obligation to fund projects be less than $25 million.

Finally, Cummins is required to pay $25 million in civil penalties, twenty-five percent of which will be paid to CARB as part of its parallel settlement with Cummins. The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Cummins Engine Co.* Civil Action No. 98–2546 (HHK), D.J. Ref. 90–5–2–1–2136A.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., N.W., Washington, D.C. 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, S.W., Washington, D.C. 20460; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1220 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $41.95 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29401 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 22, 1998, a proposed Consent Decree (excepting two appendices that will be the subject of a motion for leave to file under seal) in *United States* v. *Detroit Diesel Corporation*, Civil Action No. 98–2548 (HHK), was filed with the United States District Court for the District of Columbia. At the same time, (1) Detroit

Diesel Corporation (''DDC'') and the California Air Resources Board (''CARB'') have concluded a related settlement agreement that resolves California claims similar to the federal claims addressed by this proposed Consent Decree; and (2) the United States filed similar settlements with six other manufacturers of motor vehicle diesel engines, notice of which is also being published at this time.

The United States has asserted in a civil complaint against DDC under the Clean Air Act, as amended 42 U.S.C. 7401 *et seq.* (''the Act''), that DDC sold, offered for sale, or introduced or delivered for introduction into commerce, certain heavy duty diesel engines that are equipped with computer software that alters fuel injection timing when the engines are in actual use, relative to the fuel injection timing used to control emissions of oxides of nitrogen (''NO_X'') on the emissions test (the Federal Test Procedure or ''FTP'') required by U.S. Environmental Protection Agency (''EPA'') regulations for the sale of motor vehicle and nonroad engines in the United States. The United States alleges in its complaint that these computer strategies have an adverse effect on the engines' emission control system for NO_X, that they were not adequately disclosed to EPA, that they are emission-control defeat devices prohibited under the Act, and that these engines are not covered by an EPA Certificate of Conformity, as required by the Act for motor vehicle engines to be sold in the United States.

Under the proposed Consent Decree, DDC has agreed to resolve the United States' claims by, among other things:

(1) Reducing emissions from motor vehicle and nonroad heavy duty diesel engines and eliminating the strategies of concern in future production, in accordance with the schedule set forth in the proposed Decree. This includes a substantial reduction in emissions from motor vehicle diesel engines by the end of this year, and a requirement that DDC achieve early compliance (by October 1, 2002) with the more stringent NO_X plus nonmethane hydrocarbon emission standard that would otherwise not apply to motor vehicle diesel engines (under current law) until January 1, 2004;

(2) Meeting Consent Decree emission limits both on the FTP and on a supplemental test called the EURO III test, which measures emissions under steady state conditions;

(3) Meeting ''emission surface limits'' and ''not-to-exceed'' limits that impose specific emissions limits in real-world operating conditions;

(4) Addressing emissions from engines previously sold and currently in use by developing and supplying dealers and independent rebuilders with Low NO_X Rebuild Kits, which would be used by engine rebuilders at the time of rebuild, and would reduce NO_X emissions in rebuilt engines; and

(5) Meeting certain emission limits for nonroad engines one year earlier than the law requires;

As additional injunctive relief DDC also will spend up to $12 million to fund projects approved by EPA and CARB that are designed to reduce NO_X and PM emissions. Some of those projects are already specified in the Consent Decree. Others will be selected after the close of the public comment period and following consideration of, and review and approval by the United States and CARB, of projects proposed by DDC, including any ideas submitted by the public. DDC may receive credit against a portion of this $12 million obligation in return for securing verifiable reductions in NO_X emissions not otherwise required by this Decree or other applicable law, but in no event will its obligation to fund projects be less than $7 million.

Finally, DDC is required to pay $12.5 million in civil penalties, twenty-five percent of which will be paid to CARB as part of its parallel settlement with DDC.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Detroit Diesel Corporation,* Civil Action No. 98–2548 (HHK), D.J. Ref. 90–5–2–1–2253.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $40.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29404 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 22, 1998, a proposed Consent Decree (excepting two appendices which will be the subject of a motion for leave to file under seal) in *United States* v. *Mack Trucks, Inc.,* Civil Action No. 98–1495 (HHK), and *United States* v. *Renault Vehicules Industriels,* Civil Action No. 98–2543 (HHK), was filed with the United States District Court for the District of Columbia. At the same time, (1) Mack Trucks, Inc. (''Mack''), Renault Vehicules Industriels (''Renault'') and the California Air Resources Board (''CARB'') have concluded related settlement agreements that resolve California claims similar to the federal claims addressed by this proposed Consent Decree; and (2) the United States filed similar settlements with five other manufacturers of motor vehicle diesel engines, notice of which is also being published at this time.

The United States has asserted in civil complaints against Mack and Renault under the Clean Air Act, as amended 42 U.S.C. 7401 *et seq.* (''the Act''), that Mack and Renault sold, offered for sale, or introduced or delivered for introduction into commerce, certain heavy duty diesel engines that are equipped with computer software that alters fuel injection timing when the engines are in actual use, relative to the fuel injection timing used to control emissions of oxides of nitrogen (''NO_X'') on the emissions test (the Federal Test Procedure or ''FTP'') required by U.S. Environmental Protection Agency (''EPA'') regulations for the sale of motor vehicle engines in the United States. The United States alleges in its complaint that these computer strategies have an adverse effect on the engines' emission control system for NO_X, that they were not adequately disclosed to EPA, that they are emission-control defeat devices prohibited under the Act, and that these engines are not covered by an EPA Certificate of Conformity, as required by the Act for motor vehicle engines to be sold in the United States.

Under the proposed Consent Decree, Mack and Renault have agreed to

resolve the United States' claims by, among other things:

(1) Reducing emissions from heavy duty diesel engines and eliminating the strategies of concern in future production, in accordance with the schedule set forth in the proposed Decree. This includes a substantial reduction in emissions by the end of this year, and a requirement that Mack and Renault achieve early compliance (by October 1, 2002) with the more stringent NO_X plus nonmethane hydrocarbon emission standard that would otherwise not apply (under current law) until January 1, 2004;

(2) Meeting Consent Decree emission limits both on the FTP and on a supplemental test called the EURO III test, which measures emissions under steady state conditions;

(3) Meeting ''emission surface limits'' and ''not-to-exceed'' limits that impose specific emissions limits in real-world operating conditions;

(4) Addressing emissions from engines previously sold and currently in use by developing and supplying dealers and independent rebuilder with Low NO_X Rebuild Kits, which would be used by engine rebuilders at the time of rebuild, and would reduce NO_X emissions in rebuilt engines; and

(5) Meeting certain emission limits for nonroad engines one year earlier than the law requires;

As additional injunctive relief Mack and Renault also will spend up to $18 million to fund projects approved by EPA and CARB that are designed to reduce NO_X and PM emissions. Some of those projects are already specified in the Consent Decree. Others will be selected after the close of the public comment period following consideration of, and review and approval by the United States and CARB, or projects proposed by Mack and Renault, including any ideas submitted by the public. Mack and Renault may receive credit against a portion of this $18 million obligation in return for securing verifiable reductions in NO_X emissions not otherwise required by this Decree or other applicable law, but in no even will its obligation to fund projects be less than $11 million.

Finally, Mack and Renault are required to pay $13 million in civil penalties, twenty-five percent of which will be paid to CARB as part of its parallel settlement with Mack and Renault.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Mack Trucks, Inc.*, Civil Action No. 98–1495 (HHK), D.J. Ref. 90–5–2–1–2251, and *United States* v. *Renault Vehicules Industriels*, Civil Action No. 98–2543 (HHK), D.J. Ref. 90–5–2–1–2251/1.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., N.W., Washington, D.C. 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, S.W., Washington, D.C. 20460; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $29.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29403 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 22, 1998, a proposed Consent Decree in *United States* v. *Navistar International Corp.*, Civil Action No. 98–2545 (HHK), was filed with the United States District Court for the District of Columbia. At the same time, (i) Navistar International Corp. (''Navistar'') and the California Air Resources Board (''CARB'') have concluded a related settlement agreement that resolves California claims similar to the federal claims addressed by this proposed Consent Decree; and (2) the United States filed similar settlements with six other manufacturers of motor vehicle diesel engines, notice of which is also being published at this time.

The United States has asserted in a civil complaint against Navistar under the Clean Air Act, as amended 42 U.S.C. 7401 *et seq.* (''the Act''), that Navistar sold, offered for sale, or introduced or delivered for introduction into commerce, certain model year 1996 through 1998, heavy duty diesel engines that are equipped with computer software that alters fuel injection timing when the engines are in actual use, relative to the fuel injection timing used to control emissions of oxides of nitrogen (''NO_X'') on the emissions test (the Federal Test Procedure or ''FTP'') required by U.S. Environmental Protection Agency (''EPA'') regulations for the sale of motor vehicle engines in the United States. The United States alleges in its complaint that these computer strategies have an adverse effect on the engines' emission control system for NO_X, that they were not adequately disclosed to EPA, that they are emission-control defeat devices prohibited under the Act, and that these engines are not covered by an EPA Certificate of Conformity, as required by the Act for motor vehicle engines to be sold in the United States.

Under the proposed Consent Decree, Navistar has agreed to resolve the United States' claims by, among other things:

(1) Achieving emission reductions in addition to those already required by law of at least 40,000 tons of NO_X, through early compliance with new and more stringent emission standards, environmental projects, or other steps resulting in quantifiable and verifiable results.

(2) Addressing emissions from engines previously sold and currently in use by developing and supplying its dealers and distributors with Low NO_X Rebuild Kits, which would be used by engine rebuilders at the time of rebuild, and would reduce NO_X emissions in rebuilt engines;

(3) Meeting certain emission limits for nonroad engines one year earlier than the law requires;

(4) Participating in an in-use test program to evaluate the actual emissions performance of in-use heavy-duty diesel engines; and

(5) Voiding certain emissions averaging, banking and trading credit that otherwise would be available to Navistar to meet emission standards applicable to its engines.

Finally, Navistar is required to pay $2.9 million in civil penalties, twenty-five percent of which will be paid to CARB as part of its parallel settlement with Navistar.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Navistar*

International Corp., Civil Action No. 98–2545 (HHK), D.J. Ref. 90–5–2–1–2252.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., N.W., Washington, D.C. 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M. Street, S.W., Washington, D.C. 20460; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $16.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29406 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that on October 22, 1998, a proposed Consent Decree (excepting two appendices which will be the subject of a motion for leave to file under seal) in *United States* v. *Volvo Truck, Corp.* Civil Action No. 98–2547 (HHK), was filed with the United States District Court for the District of Columbia. At the same time, (1) Volvo Truck Corp. (''Volvo'') and the California Air Resources Board (''CARB'') have concluded a related settlement agreement that resolves California claims similar to the federal claims addressed by this proposed Consent Decree; and (2) the United States filed similar settlements with six other manufacturers of motor vehicle diesel engines, notice of which is also being published at this time.

The United States has asserted in a civil complaint against Volvo under the Clean Air Act, as amended 42 U.S.C. 7401 *et seq.* (''the Act''), that Volvo sold, offered for sale, or introduced or delivered for introduction into commerce, certain heavy duty diesel engines that are equipped with computer software that alters fuel injection timing when the engines are in actual use, relative to the fuel injection timing used to control emissions of oxides of nitrogen (''NO_X'') on the emissions test (the Federal Test Procedure or ''FTP) required by U.S. Environmental Protection Agency (''EPA'') regulations for the sale of motor vehicle engines in the United States. The United States alleges in its complaint that these computer strategies have an adverse effect on the engines' emission control system for NO_X, that they were not adequately disclosed to EPA, that they are emission-control defeat devices prohibited under the Act, and that these engines are not covered by an EPA Certificate of Conformity, as required by the Act for motor vehicle engines to be sold in the United States.

Under the proposed Consent Decree, Volvo has agreed to resolve the United States' claims by, among other things:

(1) Reducing emissions from heavy duty diesel engines and eliminating the strategies of concern in future production, in accordance with the schedule set forth in the proposed Decree. This includes a substantial reduction in emissions by the end of this year, and a requirement that Volvo achieve early compliance (by October 1, 2002) with the more stringent NO_X plus nonmethane hydrocarbon emission standard that would otherwise not apply (under current law) until January 1, 2004;

(2) Meeting Consent Decree emission limits both on the FTP and on a supplemental test called the EURO III test, which measures emissions under steady state conditions;

(3) Meeting ''emission surface limits'' and ''not-to-exceed'' limits that impose specific emissions limits in real-world operating conditions;

(4) Addressing emissions from engines previously sold and currently in use by developing and supplying dealers and independent rebuilders with Low NO_X Rebuild Kits, which would be used by engine rebuilders at the time of rebuild, and would reduce NO_X emissions in rebuilt engines; and

(5) Meeting certain emission limits for nonroad engines one year earlier than the law requires;

As additional injunctive relief Volvo also will spend up to $9 million to fund project approved by EPA and CARB that are designed to reduce NO_X and PM emissions. Some of those projects are already specified in the Consent Decree. Others will be selected after the close of the public comment period following consideration of, and review and approval by the United States and CARB of projects proposed by Volvo, including any ideas submitted by the public. Volvo may receive credit against a portion of this $9 million obligation in return for securing verifiable reductions in NO_X emissions not otherwise required by this Decree or other applicable law, but in no event will its obligation to fund projects be less than $6 million.

Finally, Volvo is required to pay $5 million in civil penalties, twenty-five percent of which will be paid to CARB as part of its parallel settlement with Volvo. The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Volvo Truck, Corp.* Civil Action No. 98–2547 (HHK), D.J. Ref. 90–5–2–1–2256.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $35.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29402 Filed 11–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1957–98; AG Order No. 2189–98]

RIN 1115–AE 26

Extension of Designation of Burundi Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until November 3, 1999, the Attorney General's designation of Burundi under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Burundi (or who have no nationality and who last habitually

resided in Burundi) may re-register for TPS and are eligible for an extension of employment authorization. This re-registration is limited to persons who registered for the initial period of TPS, which ends on November 3, 1998, or are eligible for late initial registration.

EFFECTIVE DATES: This extension of designation is effective November 4, 1998, and will remain in effect until November 3, 1999. The re-registration procedures become effective November 3, 1998, and will remain in effect until December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Subsection 308(b)(7) of the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104–208, dated September 30, 1996, redesignated section 244A of the Act as section 244 of the Act. Under this section, the Attorney General continues to be authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

On November 4, 1997, the Attorney General designated Burundi for Temporary Protected Status for a period of 12 months (62 FR 59735).

Based on a thorough review by the Departments of State and Justice of all available evidence, the Attorney General finds that the ongoing armed conflict in Burundi continues and that, due to such armed conflict, requiring the return of nationals to Burundi would pose a serious threat to their personal safety.

This notice extends the designation of Burundi under the Temporary Protected Status program for an additional 12 months from November 4, 1998, to November 3, 1999, in accordance with subsections 244(b)(3)(A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Burundi (or who have no nationality and who last habitually resided in Burundi) must comply in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of the Burundi TPS designation, late initial registrations are possible for some Burundians under 8 CFR 244.2(f)(2). Such late initial registrants must have been ''continuously physically present'' and have ''continuously resided'' in the United States since November 4, 1997, must have had a valid immigrant or nonimmigrant status during the original registration period or have had an application for such status pending during the initial registration period, and must register no later than 30 days from the expiration of such status.

An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit. Any national of Burundi who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS.

Nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who have been continuously physically present and have continuously resided in the United States since November 4, 1997, may re-register for TPS within the registration period which beings on November 3, 1998, and ends on December 2, 1998.

This notice concerns ''extension of TPS designation,'' not ''redesignation of TPS.'' An extension of TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States.

Nationals of Burundi may re-register for TPS by filing an Application for Temporary Protected Status, Form I–821. There is no fee for the Form I–821 for re-registration. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The fee for Form I–765 is one hundred dollars ($100). TPS applicants who already have employment authorization, including some asylum applicants, and those who have no need for employment authorization, including minor children, do not need to pay the fee for the I–765, must complete and file the I–765 but should submit no fee. In all other cases, the appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request under 8 CFR 244.20 is submitted to the Immigration and Naturalization Service.

Notice of Extension of Designation of Burundi Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Act (8 U.S.C. 1254), and pursuant to subsections 244(b)(3) (A) and (C) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Burundi was designated for TPS continue to exist. As a result, I have determined that the conditions for the original designation of Temporary Protected Status for Burundi continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Burundi under subsection 244(b) of the Act is extended for an additional 12-month period lasting from November 4, 1998, to November 3, 1999.

(2) I estimate that there are approximately 400 nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who received a grant of TPS during the initial period of designation, from November 4, 1997, to November 3, 1998, must comply with the re-registration requirements contained in 8 CFR 244.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who previously has been granted TPS, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 3, 1998, and ending on December 2, 1998 in order to be eligible for Temporary Protected Status during the period from November 4, 1998, until November 3, 1999. Late re-registration may be allowed when good cause is shown for a failure to timely re-register pursuant to 8 CFR 244.17(c).

(5) A national of Burundi (or an alien having no nationality who last habitually resided in Burundi) may submit a late initial registration under 8 CFR 244.2(f)(2), if the alien has been ''continuously physically present'' and ''continuously resided'' in the United States since November 4, 1997, had a

valid immigrant or nonimmigrant status during the original registration period or had an application for such status pending during the initial registration period, and registers no later than 30 days from the expiration of such status.

(6) There is no fee for Form I–821 filed as part of the re-registration application. Late initial registrants must submit a Form I–821 with the prescribed filing fee of fifty dollars ($50). A Form I–765 must be filed with the Form I–821. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1) or a properly documented fee waiver request pursuant to 8 CFR 244.20, must accompany the Form I–765. The prescribed fee for the Form I–765 is one hundred dollars ($100). An alien who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged.

(7) Pursuant to subsection 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 3, 1999, the designation of Burundi under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(8) Information concerning the TPS program for nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: October 29, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–29396 Filed 10–29–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1958–98; AG Order No. 2187–98]

RIN 1115–AE26

Extension of Designation of Sierra Leone Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until November 3, 1999, the Attorney General's designation of Sierra Leone under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals on Sierra Leone (or who have no nationality and who last habitually resided in Sierra Leone) may re-register for TPS and are eligible for an extension of employment authorization. This re-registration is limited to persons who registered for the initial period of TPS, which ends on November 3, 1998, or are eligible for late initial registration.

EFFECTIVE DATE: This extension of designation is effective November 4, 1998, and will remain in effect until November 3, 1999. The re-registration procedures become effective November 5, 1998, and will remain in effect until December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3124, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Subsection 308(b)(7) of the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104–208, dated September 30, 1996, redesignated section 244A of the Act as section 244 of the Act. Under this section, the Attorney General continues to be authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

On November 4, 1997, the Attorney General designated Sierra Leone for Temporary Protected Protected Status for a period of 12 months (62 FR 59736).

Based on a thorough review by the Departments of State and Justice of all available evidence, the Attorney General finds that the ongoing armed conflict in Sierra Leone continues and that, due such armed conflict, requiring the return of nationals to Sierra Leone would pose a serious threat to their personal safety.

This notice extends the designation of Sierra Leone under the Temporary Protected Status program for an additional 12 months from November 4, 1998, to November 3, 1999, in accordance with subsections 244(b)(3)(A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Sierra Leone (or who have no nationality and who last habitually resided in Sierra Leone) must comply in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of the Sierra Leone TPS designation, late initial registrations are possible for some Sierra Leoneans under 8 CFR 244.2(f)(2). Such late initial registrants must have been ''continuously physically present'' and have ''continuously resided'' in the United States since November 4, 1997, must have had a valid immigrant or nonimigrant status during the original registration period or have had an application for such status pending during the initial registration period, and must register no later than 30 days from the expiration of such status.

An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit. Any national of Sierra Leone who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding or removal, may also apply for TPS.

Nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who have been continuously physically present and have continuously resided in the United States since November 4, 1997, may re-register for TPS within the registration period which begins on November 3, 1998, and ends on December 2, 1998.

This notice concerns ''extension of TPS designation,'' not ''redesignation of TPS.'' An extension of TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States.

Nationals of Sierra Leone may re-register for TPS by filing an Application for Temporary Protected Status, Form I–821. There is no filing fee for the Form I–821 for re-registration. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The fee for Form I–765 is one hundred dollars ($100). TPS applicants who already have employment authorization, including some asylum applicants, and those who have no need for employment authorization, including minor children, must complete and file the I–765, but should submit no fee. In all other cases, the appropriate filing fee must accompany Form I–765, unless a

properly documented fee waiver request under 8 CFR 244.20 is submitted to the Immigration and Naturalization Service.

Notice of Extension of Designation of Sierra Leone Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Act (8 U.S.C. 1254), and pursuant to subsections 244(b)(3) (A) and (C) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Sierra Leone was designated for TPS continue to exist. As a result, I have determined that the conditions for the original designation of Temporary Protected Status for Sierra Leone continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Sierra Leone under subsection 244(b) of the Act is extended for an additional 12-month period from November 4, 1998, to November 3, 1999.

(2) I estimate that there are approximately 4,000 nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who received a grant of TPS during the initial period of designation, from November 4, 1997, to November 3, 1998, must comply with the re-registration requirements contained in 8 CFR 244.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A National of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who previously has been granted TPS, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 3, 1998, and end on December 2, 1998, in order to be eligible for Temporary Protected Status during the period from November 4, 1998, until November 3, 1999. Late re-registration may be allowed when good cause is shown for a failure to timely re-register pursuant to 8 CFR 244.17(c).

(5) A national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) may submit a late initial registration under 8 CFR 244.2(f)(2), if the alien has been ''continuously physically present'' and ''continuously resided'' in the United States since November 4, 1997, had a valid immigrant or nonimmigrant status during the original registration period or had an application for such status pending during the initial registration period, and registers no later than 30 days from the expiration of such status.

(6) There is no fee for Form I–821 filed as part of the re-registration application. Late initial, registrants must submit a Form I–821 with the prescribed filing fee of fifty dollars ($50). A Form I–765 must be filed with the Form I–821. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1) or a properly documented fee waiver request pursuant to 8 CFR 244.20, must accompany the Form I–765. The prescribed fee for the Form I–765 is one hundred dollars ($100). An alien who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged.

(7) Pursuant to subsection 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 3, 1999, the designation of Sierra Leone under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register.**

(8) Information concerning the TPS program for nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: October 29, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–29394 Filed 10–29–98; 2:42 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1959–98; AG Order No. 2188–98]

RIN 1115–AE26

Extension of Designation of Sudan Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until November 3, 1999, the Attorney General's designation of Sudan under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Sudan (or who have no nationality and who last habitually resided in Sudan) may re-register for TPS and are eligible for an extension of employment authorization. This re-registration is limited to persons who registered for the initial period of TPS, which ends on November 3, 1998, or are eligible for late initial registration.

EFFECTIVE DATES: This extension of designation is effective November 4, 1998, and will remain in effect until November 3, 1999. The re-registration procedures become effective November 3, 1998, and will remain in effect until December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Subsection 308(b)(7) of the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 104–208, dated September 30, 1996, redesignated section 244A of the Act as section 244 of the Act. Under this section, the Attorney General continues to be authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

On November 4, 1997, the Attorney General designated Sudan for Temporary Protected Status for a period of 12 months (62 FR 59737).

Based on a thorough review by the Departments of State and Justice of all available evidence, the Attorney General finds that the ongoing armed conflict in Sudan continues and that, due to such armed conflict, requiring the return of nationals to Sudan would pose a serious threat to their personal safety.

This notice extends the designation of Sudan under the Temporary Protected Status program for an additional 12 months from November 4, 1998, to

November 3, 1999, in accordance with subsections 244(b)(3)(A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Sudan (or who have no nationality and who last habitually resided in Sudan) must comply in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of the Sudan TPS designation, late initial registrations are possible for some Sudanese under 8 CFR 244.2(f)(2). Such late initial registrants must have been ''continuously physically present'' and have ''continuously resided'' in the United States since November 4, 1997, must have had a valid immigrant or nonimmigrant status during the original registration period or have had an application for such status pending during the initial registration period, and must register no later than 30 days from the expiration of such status.

An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit. Any national of Sudan who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS.

Nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have been continuously physically present and have continuously resided in the United States since November 4, 1997, may re-register for TPS within the registration period which begins on November 3, 1998, and ends on December 2, 1998.

This notice concerns ''extension of TPS designation,'' not ''redesignation of TPS.'' An extension of TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States.

Nationals of Sudan may re-register for TPS by filing an Application for Temporary Protected Status, Form I–821. There is no filing fee for the Form I–821 for re-registration. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The fee for the Form I–765 is one hundred dollars ($100). TPS applicants who already have employment authorization, including some asylum applicants, and those who have no need for employment authorization, including minor children, must complete and file the I–765 but should submit no fee. In all other cases, the appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request under 8 CFR 244.20 is submitted to the Immigration and Naturalization Service.

Notice of Extension of Designation of Sudan Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Act (8 U.S.C. 1254), and pursuant to subsections 244(b)(3) (A) and (C) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Sudan was designated for TPS continue to exist. As a result, I have determined that the conditions for the original designation of Temporary Protected Status for Sudan continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Sudan under subsection 244(b) of the Act is extended for an additional 12-month period lasting from November 4, 1998, to November 3, 1999.

(2) I estimate that there are approximately 4,000 nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who received a grant of TPS during the initial period of designation, from November 4, 1997, to November 3, 1998, must comply with the re-registration requirements contained in 8 CFR 244.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who previously has been granted TPS, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 3, 1998 and ending on December 2, 1998, in order to be eligible for Temporary Protected Status during the period from November 4, 1998, until November 3, 1999. Late re-registration may be allowed when good cause is shown for a failure to timely re-register pursuant to 8 CFR 244.17(c).

(5) A national of Sudan (or an alien having no nationality who last habitually resided in Sudan) may submit a late initial registration under 8 CFR 244.2(f)(2), if the alien has been ''continuously physically present'' and ''continuously resided'' in the United States since November 4, 1997, had a valid immigrant or nonimmigrant status during the original registration period or had an application for such status pending during the initial registration period, and registers no later than 30 days from the expiration of such status.

(6) There is no fee for Form I–821 filed as part of the re-registration application. Late initial registrants must submit a Form I/821 with the prescribed filing fee of fifty dollars ($50). A Form I–765 must be filed with the Form I–821. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1) or a properly documented fee waiver request pursuant to 8 CFR 244.20, must accompany the Form I–765. The prescribed fee for the Form I–765 is one hundred dollars ($100). A alien who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged.

(7) Pursuant to subsection 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(8) Information concerning the TPS program for nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: October 29, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–29395 Filed 10–29–98; 2:43 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority To Assert Governmental Privileges; Pension and Welfare Benefits Administration

On October 28, 1998, I issued a memorandum to the Deputy Assistant Secretary for Pension and Welfare Benefits delegating to the Assistant Secretary for Pension and Welfare Benefits authority to assert certain governmental privileges. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Debra Golding, Special Assistant to the Deputy Assistant Secretary for Pension and Welfare Benefits, telephone number (202) 219–8233.

Signed at Washington, D.C., this 28th day of October, 1998.

Alexis M. Herman,

Secretary of Labor.

U.S. DEPARTMENT OF LABOR

October 28, 1998.

Memorandum for Meredith Miller,
Deputy Assistant Secretary for Pension and Welfare Benefits

From: Alexis M. Herman.

Subject: Specific Delegation of Authority to the Assistant Secretary for Pension and Welfare Benefits.

Effective immediately, the Assistant Secretary for Pension and Welfare Benefits is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege, arising from the functions of the Pension and Welfare Benefits Administration, following his/her personal consideration of the matter, and in accordance with the following guidelines:

(a) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to the Pension and Welfare Benefits Administration in cases arising under the statutes listed in paragraph 4a of the Secretary's Order 1–87): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) interfere with the Pension and Welfare Benefits Administration's enforcement of a particular statute for which the Pension and Welfare Benefits Administration exercises investigative or enforcement authority; (2) adversely affect persons who have provided information to the Pension and Welfare Benefits Administration; or (3) deter other persons from reporting violations of the statutes.

(b) *Deliberative Process Privilege* (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in cases arising under the statutes listed in paragraph 4a of Secretary's Order 1–87): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) *Privilege for Investigational Files Compiled for Law Enforcement Purposes* (to withhold information which may reveal the Pension and Welfare Benefits Administration's confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon the Pension and Welfare Benefits Administration's enforcement of the statutes listed in paragraph 4a of the Secretary's Order 1–87, by: (1) disclosing investigative techniques and methodologies; (2) deterring persons from providing information to the Pension and Welfare Benefits Administration; (3) prematurely revealing the facts of the Pension and Welfare Benefits Administration's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation with which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

I hereby ratify any invocation of these privileges made by you since September 1, 1998, that was made in a manner consistent with the guidelines set forth in this memorandum.

[FR Doc. 98–29411 Filed 11–2–98; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–159)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 188, Notice Number 98–134, September 29, 1998.

PREVIOUSLY ANNOUNCED DATE AND ADDRESS OF MEETING: Tuesday, November 3, 1998, 9:00 a.m.–3:00 p.m.; Central Standard Time; Lyndon B. Johnson Space Center, NASA, Building 1, Room 920L, Houston, TX 77058–3696.

CHANGES IN THE MEETING: Date changed to November 4, 1998; Time and location remain the same.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis McSweeney, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4556.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the results of the IOR Task Force Working Group on International Space Station Software assessment.
—Review the results of the IOR Task Force Working Group on International Space Station Training assessment.
—Receive a briefing from the International Space Station Program Office on the current status of the International Space Station.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 28, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–29381 Filed 11–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:00 a.m. to 5:30 p.m., on Friday, November 20, 1998.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 1999.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Nancy E. Weiss, 1100

Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98–29311 Filed 11–2–98; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681]

International Uranium (USA) Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of License Amendment Application; Notice of Opportunity for Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received an application, by letter dated October 15, 1998, from International Uranium (USA) Corporation (IUC) to amend NRC Source Material License No. SUA–1358. By this submittal, IUC is requesting NRC approval to process, at IUC's White Mesa Uranium Mill, uranium-bearing material received from the Ashland 1 and Seaway Area D Formerly Utilized Sites Remedial Action Program (FUSRAP) sites, near Tonawanda, New York.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J8, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION: On September 15, 1995, NRC published in the **Federal Register** staff guidance entitled, ''Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores'' (60 FR 49296). Under this guidance, NRC-licensed uranium or thorium mills may process ''* * * natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted * * *'' subject to NRC approval. By this amendment application, IUC is requesting that it be allowed to process, at the White Mesa mill, alternate feed materials received from the Ashland 1 and Seaway Area D FUSRAP sites, located near Tonawanda, New York.

The materials in question at the Ashland 1 and Seaway Area D sites, which currently are being remediated by the U.S. Army Corps of Engineers, are associated with uranium ore processing activities conducted by the Manhattan Engineering District during the mid-1940s. IUC states that the average uranium content of the materials is expected to be approximately 0.06 weight percent, and IUC estimates that a total of approximately 25,000 to 30,000 cubic yards of material would be shipped, over a three-to four-month period, to the White Mesa mill, near Blanding, Utah.

Activities at the White Mesa mill are authorized under NRC Source Material License No. SUA–1358. IUC's application to amend SUA–1358, which describes the proposed change and the reasons for the request, is available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing also must be served, by delivering it personally or by mail to:

(1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, CO 80265;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 28th day of October 1998.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–29432 Filed 11–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 2, 9, 16, and 23, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 2

Monday, November 2

2:00 p.m.
Briefing on Reactor Oversight Process Improvements (Public Meeting) (Contact: Frank Gillespie, 301–415–1275)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 9—Tentative

Thursday, November 12

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Friday, November 13

9:00 a.m.

*Meeting on NRC Response to Stakeholders' Concerns (Public Meeting) (Contact: Bill Hill, 301–415–1661/1969)

***Please Note:** The room location for the *Meeting on NRC Response to Stakeholders' Concerns,* scheduled for Friday, November 13, has been changed. The new location is NRC auditorium, Bldg 2, NRC Headquarters, Rockville, Md.

Week of November 16—Tentative

Tuesday, November 17

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of November 23—Tentative

Tuesday, November 24

9:00 a.m.

Briefing on Fire Protection Issues (Public Meeting) (Contact: Steve West, 301–415–1220)

Wednesday, November 25

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 3–0 on October 23, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Yankee Atomic Electric Company (Yankee Nuclear Power Station), Docket No. 50–029–LA, Memorandum and Order (Decision on Standing), LBP–98–12, 47 NRC 343 (June 12, 1998) and (b) Hydro Resources, Inc.: Presiding Officer's Memorandum and Order Setting Schedule and Ruling on Bifurcation, September 22, 1998'' (Public Meeting) be held on October 23, 1998, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: October 30, 1998.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–29541 Filed 10–30–98; 3:24 pm]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: The Peace Corps.

ACTION: Notice of public use form review request of the Office of Management and Budget (0420–0529).

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) this notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the annual Peace Corps Day Brochure. A copy of the information collection may be obtained from Betsi Shays, Director of World Wise Schools, Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Ms. Betsi Shays may be contacted by telephone at 202–692–1455. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden the collection of information those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Day Brochure.

Need for an use of this information: The Peace Corps needs this information in order to identify prospective Peace Corps Day participants so that we can help them prepare for their classroom presentations. These materials are not considered to be gifts.

Respondents: Return Peace Corps Volunteers and/or educators who plan to participate in Peace Corps Day.

Respondents obligation to reply: Voluntary.

Burden on the public

a. Annual reporting burden: 6,500 hours.

b. Annual record keeping burden: 0 hours.

c. Estimated average burden per response: 3 min.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 130,000.

f. Estimated cost to respondents: $00.81 (per respondent), $24,300 (cost of total response).

This notice is issued in Washington, DC, on 28 October 1998.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–29431 Filed 11–2–98; 8:45 am]

BILLING CODE 6051–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under the PBGC's regulation on Annual Financial and Actuarial Information Reporting, 29 CFR Part 4010 (OMB control number 1212–0049; expires December 31, 1998). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 3, 1998.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General

Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) requires each member of a corporate controlled group to submit identifying, financial, and actuarial information to the PBGC in certain circumstances. Reporting is required (1) if the aggregate unfunded vested benefits of all defined benefit pension plans maintained by the controlled group exceed $50 million, (2) if the controlled group maintains any plan with missed contributions (unless paid within a ten-day grace period), or (3) if the controlled group maintains any plan with funding waivers in excess of $1 million and any portion is still outstanding (taking into account certain credit balances in the funding standard account). The PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010) implements section 4010.

The regulation requires the controlled group to file certain identifying information, certain financial information, each plan's actuarial valuation report, certain participant information, and a determination of the amount of each plan's benefit liabilities. The information submitted under the regulation allows the PBGC (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities.

The collection of information under the regulation has been approved by OMB under control number 1212–0049 through December 31, 1998. The PBGC is requesting that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 60 controlled groups per year respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 9.2 hours and $7,500 per controlled group, for a total burden of 552 hours and $450,000.

Issued in Washington, D.C., this 28th day of October, 1998.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–29398 Filed 11–2–98; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of Data Collection Forms

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees. The Department of Defense contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of the functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on respondents through use of technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or send an email message to mbtoomey@opm.gov.

DATES: Comments on this proposal must be received on or before January 4, 1999.

ADDRESSES: Send or deliver written comments to—Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mark A. Allen, Salary and Wage Systems Division, Office of Compensation Administration, (202) 606–2848.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–29329 Filed 11–2–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on October 8 1998, 1998 (63 FR 54163). Individual authorities established or revoked under Schedules A and B and established under Schedule C between September 1, 1998, and September 30, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during September 1998.

Schedule B

No Schedule B authorities were established or revoked during September 1998.

Schedule C

The following Schedule C authorities were established September 1998.

Commodity Futures Trading Commission

Special Assistant to the Commissioner. Effective September 8, 1998.

Special Assistant to the Commissioner. Effective September 10, 1998.

Department of Agriculture

Executive Assistant to the Administrator, Rural Housing Service. Effective September 8, 1998.

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 16, 1998.

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective September 16, 1998.

Confidential Assistant to the Administrator, Rural Business Service. Effective September 18, 1998.

Confidential Assistant to the Chief Information Officer, Policy Analysis and Coordination Center. Effective September 18, 1998.

Confidential Assistant to the Director, Intergovernmental Affairs. Effective September 18, 1998.

Department of Commerce

Special Assistant to the Under Secretary for Economic Affairs/ Administrator, Economics and Statistics Administration. Effective September 8, 1998.

Senior Advisor to the Under Secretary for Economic Affairs. Effective September 30, 1998.

Department of Defense

Speechwriter to the Assistant Secretary for Public Affairs. Effective September 4, 1998.

Confidential Assistant to the Assistant Secretary of Defense for Health Affairs. Effective September 10, 1998.

Defense Fellow to the Special Assistant for White House Liaison. Effective September 11, 1998.

Department of Education

Special Assistant to the Deputy Secretary. Effective September 1, 1998.

Special Assistant to the Deputy Secretary. Effective September 11, 1998.

Confidential Assistant to the Chief of Staff. Effective September 21, 1998.

Confidential Assistant to the Chief Financial and Chief Information Officer. Effective September 25, 1998.

Department of Energy

Special Projects Officer to the Director, Office of Public Affairs. Effective September 11, 1998.

Department of Health and Human Services

Director, Division of Intergovernmental Affairs to the Deputy Assistant Secretary for Policy and External Affairs. Effective September 25, 1998.

Department of Justice

Staff Assistant to the Director, Office of Public Affairs. Effective September 11, 1998.

Department of Labor

Special Assistant to Director, Women's Bureau, Office of the Secretary. Effective September 11, 1998.

Chief of Staff to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs. Effective September 16, 1998.

Department of State

Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective September 16, 1998.

Department of Transportation

Special Assistant to the Associate Director for Media Relations and Special Projects. Effective September 8, 1998.

Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs. Effective September 25, 1998.

Department of the Treasury

Deputy Chief of Staff to the Chief of Staff. Effective September 11, 1998.

Senior Advisor to the Chief of Staff. Effective September 16, 1998.

Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective September 18, 1998.

Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective September 30, 1998.

Environmental Protection Agency

Senior Advisor to the Chief of Staff. Effective September 18, 1998.

Federal Emergency Management Agency

Director, Office of Emergency Information and Media Services to the Director, Federal Emergency Management Agency. Effective September 28, 1998.

Federal Energy Regulatory Commission

Ombudsman to the Director, Office of External Affairs. Effective September 23, 1998.

National Aeronautics and Space Administration

Program Analyst to the Deputy Associate Administrator for External Relations. Effective September 8, 1998.

Office of Management and Budget

Confidential Assistant to the Executive Associate Director. Effective September 4, 1998.

Staff Assistant to the Associate Director, Legislative Affairs. Effective September 30, 1998.

Office of National Drug Control Policy

Staff Assistant to the Director, Office of National Drug Control Policy. Effective September 4, 1998.

Staff Assistant to the Chief of Staff. Effective September 21, 1998.

Small Business Administration

Special Assistant to the Deputy Administrator. Effective September 8, 1998.

National Director for Native American Outreach to the Associate Deputy Administrator for Entrepreneurial Development. Effective September 25, 1998.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development. Effective September 30, 1998.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development. Effective September 30, 1998.

U.S. International Trade Commission

Special Assistant (Economics) to the Commissioner. Effective September 16, 1998.

United States Tax Court

Trial Clerk to the Judge. Effective September 28, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218. Office of Personnel Management.

Janice A. Lachance,

Director.

[FR Doc. 98–29327 Filed 11–2–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:00 p.m., November 10, 1998.

PLACE: OPM Conference Center, Room 1350, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: This National Partnership Council will consider for approval a draft of its skills-building publication. The Council will also review and consider an initial draft of an NPC 1999 Strategic Action Plan, outlining the Council's objectives for 1999 and actions to be taken to meet those objectives. The draft plan will also include proposed dates for 1999 NPC meetings.

CONTACT PERSON FOR MORE INFORMATION: Andrew M. Wasilisin, Acting Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–29328 Filed 11–2–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Meteor Industries, Inc., Common Stock, $.001 Par Value; Redeemable Common Stock Purchase Warrants) File No. 1–12401

October 28, 1998.

Meteor Industries, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Board of Directors of the Company unanimously approved resolutions on August 25, 1998, to withdraw the Company's Securities from listing on the Amex. The Board of Directors believed that the listing of the Securities on the Nasdaq Small Cap Market would provide security holders with greater liquidity.

On September 15, 1998, the Securities commenced trading on the Nasdaq Small Cap Market.

The Company has complied with the rules of the Amex by notifying the Exchange of its intention to withdraw its Securities from listing on the Exchange by letter dated September 8, 1998. Also enclosed with that letter was a certified copy of the Board resolutions. The Exchange replied by letter dated September 9, 1998, advising that the Amex would not interpose any objection to such action nor require the Company to send security holders any statement with respect thereto.

Any interested person may, on or before November 19, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29336 Filed 11–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Real Goods Trading Corporation, Common Stock, No Par Value) File No. 1–12964

October 28, 1998

Real Goods Trading Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company is listed for trading on the PCX, as well as the Nasdaq and the Chicago Stock Exchange, Inc. (''CHX'').

The Company has complied with rules of the PCX by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Exchange and by setting forth in detail to the Exchange the facts and reasons supporting the proposed withdrawal.

In deciding whether to withdrawal its Security from listing and registration on the PCX, the Company considered the direct and indirect costs and expenses attendant on maintaining the multiple listing of its Security on the PCX, Nasdaq and CHX. The Company does not see any particular advantage in multiply trading its Security and believes that listing on the PCX does not appear to provide incremental benefit.

By letter dated August 5, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Company's Security from listing and registration on the PCX.

This application relates solely to the withdrawal from listing on the Company's Security from the Exchange and shall have no effect upon the continued listing of the Security on the Nasdaq or the CHX.

By reason of Section 12 of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before November 19, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29337 Filed 11–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act Release No. 34–40599; International Series Release No. 1164; File Nos. SR–Amex–98–41; SR–CBOE–98–45; and SR–Phlx–98–49]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Incorporated, the Chicago Board Options Exchange, Incorporated and the Philadelphia Stock Exchange, Incorporated Relating to the Listing and Trading of Options on Telebras Portfolio Certificate American Depositary Receipts

October 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] (''Act'') and Rule 19b–4 [2] thereunder, on October 14, 1998, October 15, 1998, and October 19, 1998, the Chicago Board Options Exchange, Incorporated (''CBOE''), the American Stock Exchange, Incorporated (''Amex'') and the Philadelphia Stock Exchange, Incorporated (''Phlx''), respectively, filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes, as described in Items I and II below, which Items have been prepared by the self-regulatory organizations (''SROs''), to permit the listing and trading of standardized equity options on Telebras Portfolio Certificate American Depositary Receipts (''RTBs''), as described below.[3] The Commission is publishing this notice to solicit comments from interested persons on the proposed rule changes and to grant approval to the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs proposed to list and trade standardized equity options on the RTBs, as described below. The texts of the proposed rule changes are available at the Office of the Secretary, Amex, CBOE and Phlx, respectively, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] RTBs are sponsored American Depositary Receipts (''ADRs'') established by Morgan Guaranty Trust Company of New York (''Depositary''). RTBs began trading on the New York Stock Exchange (''NYSE'') on October 13, 1998 pursuant to NYSE Listing Standard 103.5. A copy of the Depositary Agreement and Form F–6 (Registration No. 333–9476) was filed with the Commission, declared effective on October 8, 1998 and is publicly available.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the SROs included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on their respective proposed rule changes. The text of those statements may be examined at the places specified in Item IV below and summaries of the most significant aspects are set forth in Sections (A), (B), and (C) below.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

1. Purpose

Telecommunicacoes Brasileiras S.A. (''Telebras'') is a corporation organized under the laws of the Federative Republic of Brazil. Prior to July 28, 1998, Telebras was wholly-owned by the government of Brazil.[4] Telebras was eventually reorganized (''Reorganization'') into twelve spin-off companies (''Spin-Offs''). In April 1998, the Bolsa de Valores de Sao Paulo (''BOVESPA'') began listing and trading RCTB Portfolio Certificates (''RCTB Certificates''). On September 21, 1998, the Spin-Off shares were listed, and began trading, on the BOVESPA. The RCTB Certificates currently represent one share each of the Spin-Offs and the residual Telebras shares.[5] Each RTB will represent 1,000 RCTB Certificates. As a result, each RTB will provide investors with a single exchange traded instrument that is intended to represent shares of each Spin-Off and the residual Telebras shares.

Currently, the SROs trade options on Telebras ADRs (''TBR'') and options on Telebras Holding Company Depositary Receipts SM (''HOLDRs'') [6] in order to allow investors in TBRs and HOLDRs to hedge their respective positions by opening offsetting positions in TBR options and HOLDRs options. The SROs now seek to list and trade options on RTBs as a way to permit investors in RTBs to hedge their exposure to the Brazilian telecommunications industry.

To acquire an RTB prior to the listing of the Spin-Off ADRs, an investor must first acquire a TBR. To acquire an RTB after the listing of the Spin-Off ADRs, an investor must first acquire the Spin-Off ADRs, and a residual TBR (if the residual TBRs still exist). In either case, the investor must then cancel the TBR, or the Spin-Off ADRs and residual TBR (whichever is applicable), and have the underlying securities delivered to the Companhia Brasileiras de Liquidacae e Custodia (''CBLC''). The CBLC is responsible for all clearing and custody services related to securities traded on the BOVESPA. The CBLC will convert the underlying securities without charge into RCTB Certificates. The RCTB Certificate will then be deposited into the custody account of J.P. Morgan (''JPM'') at Banco Itau in Brazil. JPM will then issue an RTB, created by the Depositary and representing 1,000 RCTB Certificates, to the investor.

The SROs now propose to trade options on the RTBs pursuant to Amex Rule 915, CBOE Rule 5.3, and PHLX Rule 1009 (collectively, the ''SRO Rules''), respectively.[7] The SROs have requested to rely upon the public ownership, public holding, trading volume and market price history of RCTB Certificates for purposes of satisfying the associated requirements for RTBs under the SRO Rules. Commentary .01 of the SRO Rules [8] requires that, absent exceptional circumstances, at the time the SRO selects an underlying security for options transactions, the following guidelines with respect to the issuer shall be met: (1) there are a minimum of 7 million shares of the underlying securities which are owned by persons other than those required to report their security holdings under Section 16(a) of the Act (''Public Ownership Requirement''); (2) there are a minimum of 2,000 holders of the underlying security (''Public Holder Requirement''); (3) there is trading volume (in all markets in which the underlying security is traded) of at least 2.4 million shares during the preceding 12 months (''Volume Requirement''); (4) the market

[4] The Brazilian government divested its interest in Telebras through a public auction in Brazil that commenced on July 28, 1998.

[5] Prior to September 21, 1998, the RCTB Certificates only represented Telebras shares. The RCTB Certificates will represent one share of each Spin-Off when Telebras is extinguished.

[6] HOLDRs are listed on the NYSE and are intended to represent TBRs currently listed on the NYSE, until such time as the Spin-Off ADRs are listed on the NYSE. When the Spin-Off ADRs are listed on the NYSE, HOLDRs will provide a single exchange traded instrument that is intended to represent each Spin-Off ADR and the residual TBR. When Telebras is finally extinguished, TBR will cease to exist and HOLDRs will represent each Spin-Off ADR. *See* Securities Exchange Act Release No. 40298 (August 3, 1998), 63 FR 43435 (August 13, 1998).

[7] The SROs have already filed certification with the Options Clearing Corporation for options on RTBs.

[8] The Amex and Phlx Rules refer to ''Commentaries'' while the CBOE Rules refer to ''Interpretations and Policies.'' For purposes of this order, the term ''Commentary'' will be used for all SRO Rules.

price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection (''Price Requirement''); and (5) the issuer is in compliance with any applicable requirements of the Act. The SROs request to reply upon the price history of RCTB Certificates in order to satisfy the Price Requirement applicable to options on the RTBs so that they do not have to wait three months prior to listing options on the RTBs. The SROs believe that it is essential that options on RTBs be provided without significant delay so that investors who have invested in RTBs can use options to manage the risks of their positions in RTBs.

Commentarty .03 of the SRO Rules requires that with respect to an ADR, an effective surveillance sharing arrangement be in place with the proper regulatory authority in the country where the security underlying the ADR trades or, as one of several alternatives, as the Commission otherwise authorizes the listing. The SROs note that the Commission has entered into a Memorandum of Understanding (''MOU'') with the Comissao de Valores Mobiliarios (''CVM'') in Brazil. In addition, the Amex represents that it has a surveillance sharing agreement (''SSA'') with the BOVESPA. The CBOE also represents that it has an SSA with BOVESPA. The Phlx does not have an SSA with the BOVESPA. If the MOU ceases to exist, each SRO represents that it will contact the Commission immediately in order to enable the Commission to determine what measure should be taken with regards to the listing and trading of options on the RTBs.[9]

Commentary .05(d) of the SRO Rules, which applies to options on securities issued during a restructuring transaction that are sold in a public offering or pursuant to a rights distribution (''Restructure Security''), provides that an SRO may ''look back'' to the ''original'' security regarding the Public Ownership Requirement and Public Holder Requirement subject to certain conditions enumerated in the SRO Rules. Commentary .05(d) also provides that an SRO may certify that the market price of the Restructure Security meets the Price Requirement by relying on the price history of the original security, provided that the Restructure Security has traded ''regular way'' on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection and has a market price of at least $7.50. In addition, Commentary 05.(d) permits the SROs to assume the satisfaction of one or both of the Public Ownership Requirement and the Public Holder Requirement on the date RTB is selected for options trading only if (A) RTB is listed on an exchange or automatic quotation system subject to initial listing requirements in respect of public ownership of shares or number of shareholders, or both, is no less stringent than the list requirements of the SRO, or (B) at least 40 million shares of RTB are issued and outstanding on the intended date for listing options on RTB, unless, in the case of (A) or (B), the SRO, after reasonable investigation, has determined that such requirements will not in fact be satisfied on the date the SRO intends to list options on RTB.[10] Finally, Commentary .05(d) provides that an SRO may certify that the trading volume of the Restructure Security satisfies the Volume Requirement only if the trading volume in the Restructure Security, without reliance on the original security, has been at least 2.4 million shares during a period of 12 months or less ending on the date the Restructure Security is selected for options trading.[11]

Initial reports indicate that the RTBs have been trading near the current market price range for RCTB Certificates (approximately $50 to $134). In addition, the SROs state that although the RTBs are a unique product, it resembles shares issued during a restructuring transaction. Therefore, the SROs believe that they should be allowed to rely on the price history of the original security. Accordingly, the SROs represent that the RTBs will comply with the requirement that its market price be at least $7.50 for at least 5 trading days immediately prior to the listing date in order to rely upon the market price history of the original security to satisfy the three month Price Requirement. Thus, the SROs assert that options should be permitted to be listed on the RTBs following the five day Price Requirement Period, provided that all other options listing criteria, including that there are 7 million RTB shares owned by Public Owners, that there are 2,000 Public Holders of RTB shares and that 2.4 million RTB shares have been traded, will be met prior to the listing of RTB options.[12] In addition, the SROs note that, the Commission recognized a similar need for investors to have the ability to employ adequate hedging strategies using options on newly acquired securities issued in a restructuring transaction when it approved the SROs' proposal to list and trade options on HOLDRs following the five day Price Requirement period, provided that all other options listing criteria were met.[13]

The CBOE and Phlx represent that they will establish position and exercise limits for RTB options equal to 25,000 contracts on the same side of the market. The Amex represents that it will establish position and exercise limits for RTB options equal to 7,500 contracts on the same side of the market.[14] Prior to the commencement of trading, the SROs will issue an Information Circular advising their members concerning the proposed options on the RTBs.

2. Statutory Basis

The basis under the Act for the proposed rule changes is the requirement under Section 6(b) of the Act, and Section 6(b)(5) in particularly [15] that an exchange have rules that are designed to promote just and equitable principals of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The SROs believe that the proposed rule changes satisfy the requirements of Section 6(b) in general, and Section 6(b)(5) in particular, because the expedited trading of options on the RTBs will allow investors currently holding RTBs, to continue to hedge their positions by opening offsetting positions in options on RTBs.

[9] In the case of the Amex and CBOE, if the SSAs cease to exist but the MOU is still effective, they are not required to notify the Commission.

[10] In other words, if the Restructure Security does not meet either of these alternatives, it cannot piggyback upon the public ownership of shares and the number of shareholders of the original security. In such instances, the SRO cannot select a Restructure Security for options listing until there are 7 million shares of the Restructure Security outstanding and 2,000 public holders of the Restructure Security.

[11] The Restructure Security cannot piggyback upon the trading volume of the original security. Accordingly, the SROs cannot select a Restructure Security for options listing until 2.4 million shares of the Restructure Security actually have traded.

[12] Phone call between Nandita Yagnick, Counsel, Phlx, Claire McGrath, Vice President and Special Counsel, Amex, Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, James Yong, First Vice President, General Counsel and Secretary, The Options Clearing Corporation and Marianne Duffy, Special Counsel, Division of Market Regulation (''Division''), SEC and Sonia Patton, Attorney, Division, SEC on October 21, 1998 (''October 21, 1998 Conference Call'').

[13] *See supra* note 6.

[14] The Commission has informed the SROs that they should establish position limits for RTB options under their respective rules based upon the trading volume of RTB only and not the trading volume of RCTB Certificates.

[15] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

For the reasons discussed below, the Commission finds that the SRO's proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule changes is consistent with Section 6(b)(5) of the Act, which requires an exchange to have rules designed to promote just and equitable principals of trade, to remove impediments to, and perfect the mechanism of, a free and open market and national market system, and in general, to protect investors and the public interest.[16]

As the Commission has previously stated,[17] it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. The Commission believes that these standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of holders and public ownership of shares are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under Commentary .01 of the SRO Rules, investors may be precluded for a significant period (generally, the three calendar month period required to meet the Price Requirement) from employing an adequate hedging strategy involving options on newly issued securities such as those issued during an initial public offering or rights distribution.

As the SROs observe in their filings, and alternate method of meeting equity option listing standards has been established for securities issued in connection with a spin-off, reorganization, restructuring or similar corporate transaction.[18] These alternate standards facilitate the earlier listing of options on Restructure Securities by permitting an SRP to determine whether the Restructure Security satisfies the Public Ownership Requirement, Public Holder Requirement, Volume Requirement and Price Requirement by reference to the outstanding equity security previously issued by the issuer of the Restructure Security. While such criteria are not directly applicable to the listing of options on RTBs, the CBOE notes that RTBs are being issued as a result of a corporate restructuring. The SROs believe that the price history of the RCTB Certificate should be allowed to be used to determine compliance with the Price Requirement since RTBs are designed to replicate RCTB Certificates.

The Commission believes that it is appropriate for the SROs to deem the Price Requirement satisfied for the listing of options of RTBs if the RTBs have a closing price of a least $7.50 for at least five trading days since its issuance.[19] This conclusion is based on the Commission's determination that RTBs are designed to track the price of RTCB Certificates. It is extremely likely that RTBs would independently meet the Price Requirement over the next three months.[20] Nevertheless, permitting the use of RCTB Certificates price history to meet the Price Requirement will allow the desirable result of permitting owners of RTBs to be able to hedge their exposure sooner through a single overlying options product. Finally, the Commission notes that requiring actual five day price history of RTBs, prior to listing options thereon, further ensures that the market is sufficient to support options trading and is not subject to manipulation.

The Commission's approval of these proposals is also based on the fact that, apart from the Price Requirement period, all other options listing criteria, including that there are 7 million RTB shares owned by Public Owners, that there are 2,000 Public Holders of RTB shares and that 2.4 million RTB shares have been traded, will be met prior to the listing of RTB options.[21]

In addition, as previously stated, Commentary, .03 of the SRO Rules requires that with respect to an ADR, an effective surveillance sharing arrangement be in place with the proper regulatory authority in the country where the security underlying the ADR trades or, as one of several alternatives, as the Commission otherwise authorizes the listing. In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that the Commission requires that there be an SSA is place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivate product and its underlying stocks.[22] Such agreements provide a

[16] Pursuant to Section 6(b)(5) of the Act, the Commission must predict approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] *See* Securities Exchange Act Release No. 37011 (March 22, 1996) 61 FR 14177 (March 29, 1996) (order approving proposed rule relating to listing standards for options on securities issued in a reorganization transaction pursuant to a public offering or a rights distribution).

[18] The Commission notes that there is a distinction in treatment of options overlying securities issued to existing shareholders in spin-off, reorganization or restructuring and options overlying securities issued through a public offering or rights distribution. Specifically, options overlying securities issued pursuant to a public offering or rights distribution cannot be listed until the market price of Restructure Security has been at least $7.50 for a least five trading days immediately preceding the selection date, while options overlying securities issued to existing shareholders in a spin-off, reorganization or restructuring can ''look back'' to the ''original'' security to meet the Price Requirement without waiting five trading days.

[19] This approach incorporates the price history of RCTB Certificates for the prior measured period converted to U.S. dollars. RCTB Certificates have traded well in excess of $7.50 per share for the prior three months.

[20] RTBs have traded from approximately $70 to $77 per share since October 13, 1998. Thus, the RTBs have been trading well within the previously discussed $50 to $134 trading range of the RCTB certificates.

[21] The Commission notes that the SROs may use various sources for collecting data on Public Owners of RTB shares, Public Holders of RTB shares and trading volume of RTB shares. As a result of the unique circumstances surrounding the Reorganization, the SROs have agreed to notify the Commission, prior to listing RTB options, when there are 7 million RTB shares owned by Public Owners, 2,000 Public Holders of RTB shares and 2.4 million RTB shares have been traded so that the Commission can ensure that the SROs list RTB options consistently pursuant to this order. *See* October 21, 1998 Conference Call, *supra* note 12.

[22] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of an SSA. An SSA should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that an SSA require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identify. *See* Securities

Continued

necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. With regards to RTBs, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.[23]

In order to address the above noted concerns and to comply with Commentary .03 of the SRO Rules, the SROs note that the Commission has entered into an MOU and the CVM. The Amex represents that it has as SSA with the BOVESPA. The CBOE also represents that it has an SSA with the BOVESPA. If the MOU ceases to exist, each SRO represents that it will contact the Commission immediately in order to enable the Commission to determine what measures should be taken with regards to the listing and trading of options on RTBs.[24] The Commission believes that the combination of the SSAs and the MOU satisfy the requirement of Commentary .03 of the SRO Rules. The Commission also notes that the SROs have relied on the SSAs and the MOU to trade option overlying Telebras ADSs.

For the reasons described above, the Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. The Commission believes that the proposals will benefit investors that have invested in TRBs and who seek to hedge their exposure to the Brazilian telecommunications market through a single overlying options product. In addition, the Commission believes that any regulatory issues that are posed by options on RTBs have been addressed adequately by the SROs in a manner consistent with past Commission action.[25]

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[26] of the Act, to find that good cause exists to approve the proposed rule changes on an accelerated basis.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will be available for inspection and copying at the principal office of the SROs. All submission should refer to File Nos. SR–Amex–98–41, SR–CBOE–98–45 and SR–Phlx–98–49 and should be submitted by November 24, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR–Amex–98–41, SR–CBOE–98–45 and SR–Phlx–98–49) are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29340 Filed 11–2–98; 8:45 am]

BILLING CODE 8010–01–M

Exchange Act Release No. 31529 (November 27, 1992).

[23] An MOU provides a framework for mutual assistance in investigatory and regulatory matters. Generally, the Commission has permitted an SRO to rely on an MOU in the absence of an SSA only if the SRO receives an assurance from the Commission that such an MOU can be relied on for surveillance purposes and includes, at a minimum, the transaction, clearing and customer information necessary to conduct an investigation. *See* Securities Exchange Act Release No. 35184 (December 30, 1994) 60 FR 2616 (January 10, 1995). In addition, an SRO should nonetheless endeavor to develop SSAs with the foreign exchange that trades the underlying securities even if the SRO receives prior Commission approval to rely on an MOU in place of an SSA.

[24] The Commission notes that although the Phlx does not have an SSA with the BOVESPA, the MOU alone satisfies the requirement of Commentary .03 of the SRO Rules. Furthermore, the Commission believes that in the case of the Amex and the CBOE, if the SAAs cease to exist but the MOU is still effective, the Amex and the CBOE are not required to notify the Commission.

[25] *Supra* note 6.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40607; File No. SR–CBOE–98–22]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Floor Official Fining Authority

October 27, 1998.

I. Introduction

On May 28, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consolidating most floor official fining authority governed by Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations (''Summary Fine Rule''), under one regulatory circular. The CBOE filed Amendment No. 1 to its proposal with the Commission on July 8, 1998,[3] Amendment No. 2 on August 27, 1998,[4] and Amendment No. 3 on September 9, 1998.[5]

On September 21, 1998, the proposed rule change and amendments were published for comment in the **Federal Register**.[6] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to modify Exchange Rule 6.20, Admission to and Conduct on the Trading Floor, and certain other Exchange Rules to consolidate most floor official fining authority governed by Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations (''Summary Fine Rule''), under one regulatory circular.[7] The CBOE also proposes to modify its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Debora E. Barnes, Senior Attorney, CBOE, to Gail Marshall-Smith, Special Counsel, Division of Market Regulation (''Division''), Commission, dated July 7, 1998 (''Amendment No. 1'').

[4] *See* Letter from Debora E. Barnes, Senior Attorney, CBOE, to Terri L. Evans, Attorney, Division, Commission, dated August 26, 1998 (''Amendment No. 2'').

[5] *See* Letter from Debora E. Barnes, Senior Attorney, CBOE, to Terri L. Evans, Attorney, Division, Commission, dated September 8, 1998 (''Amendment No. 3'').

[6] Exchange Act Release No. 40440 (Sept. 14, 1998) 63 FR 50265.

[7] The Exchange has issued separate circulars setting forth fine schedules for violations of Rule 8.51 with respect to OEX and DJX options. These circulars were approved by the Commission in SR–CBOE 96–31 and SR–CBOE 97–45.

regulatory circular pertaining to the administration and enforcement of paragraph (g)(6) of the Summary Fine Rule, as it relates to minor rule violations applicable to trading conduct and decorum policies (''Trading Conduct and Decorum Circular'').

The purpose of the CBOE's summary fine plan is to provide a mechanism whereby certain minor violations of Exchange Rules can be resolved fairly, effectively and expeditiously. Because the minor rule violations subject to summary fines are easily ascertainable by floor officials, they are suitable for summary fine treatment. The proposed changes are meant to clarify the categories of behavior subject to summary fines and clarify the authority of floor officials to summarily fine under the Summary Fine Rule.

Currently, Rule 6.20 provides that admission to the Exchange's trading floor is limited to members, employees of the Exchange, clerks employed by members and registered with the Exchange, and such other persons as may be provided by resolution of the Board. The Exchange is proposing to amend Rule 6.20 to clarify that Exchange visitors and service personnel, including but not limited to, electricians, building maintenance engineers, and computer repair support staff, are authorized admission to the trading floor pursuant to and in accordance with Exchange policy concerning admission to the trading floor.[8] In addition, the amendment to Rule 6.20 grants the President, rather than the Board, the authority to allow other people admission to the floor, because admission to the floor is primarily an administrative issue and the President is generally able to act more expeditiously than the Board, which generally must convene a meeting to take action.

The summary fines for Rule 6.20 violations are set forth in the Trading Conduct and Decorum Circular. Currently, if a member is fined for a Rule 6.20 violation more than once in a calendar year, that individual is subject to increased summary fines for a second or subsequent offense of that kind in the same calendar year. The Exchange proposes to amend the Trading Conduct and Decorum Circular to provide that summary fines for second or subsequent offenses will be assessed on a twelve-month rolling period, rather than on a calendar year basis. This Circular also is being amended to allow for the fining of any supervisory personnel of an associated person of a member who fails to adequately supervise an associated person. The Circular and Rule 17.50 also are being amended to clarify that the Exchange, if warranted under the circumstances, may impose a fine for a first offense equal to the fine authorized for a second or third offense and to impose for a second offense the fine authorized for a third offense. This provision permits the Exchange to impose greater fines for more serious behavior. Currently, floor officials only have the ability to impose a fine authorized for a third offense for a first or second offense. This has restricted the ability of floor officials to fine a manner corresponding to the circumstances.[9]

The Exchange also is amending the Trading Conduct and Decorum Circular to add the following summary fine categories: Enabling a barred or suspended member to gain improper access to the floor, with fines of $500 for a first violation, $1,000 for a second violation, and $2,000 for a third violation; Enabling or assisting a member or associated person to gain improper access to the floor, with fines of $100 for a first violation, $250 for a second violation, and $500 for a third violation; Gaining improper access to the floor, with fines of $100 for a first violation, $250 for a second violation, and $500 for a third violation; Impermissible use of member phones, with fines of $50 for a first violation, $150 for a second violation, and $300 for a third violation; Visitor badge returned late, with a warning for the first violation, a $25 fine for a second violation, and a $50 fine for a third violation; and Failure to supervise a visitor, with fines of $50 for a first violation, $100 for second violation, and $250 for a third violation.

Additionally, the Exchange is amending the Trading Conduct and Decorum Circular to specify fine amounts for the following conduct: Effecting or attempting to effect transactions with no public outcry, with fines of $500 for a first violation, $1,000 for a second violation, and $2,000 for a third violation; Failure of a market-maker to respond to a request for the market by order book official, with fines of $500 for a first violation, $1,000 for a second violation, and $2,000 for a third violation; Failure to bid or offer within ranges specified by Rule 8.7(b), with fines of $500 for a first violation, $1,000 for a second violation, and $2,000 for a third violation; Failure to abide by floor official determination or floor official request for information, with fines of $1,000 for a first violation, $2,500 for a second violation, and $5,000 for a third violation; and Violation of Rule 8.51 in an option class other than OEX or DJX, with fines of any amount up to $5,000 for first, second and third violations. Floor officials currently have fining authority for this conduct under Rule 6.20.04, but specific fine amounts for the conduct are not set forth in the Trading Conduct and Decorum Circular. Including this conduct in the Circular will clarify that floor official fines for this conduct are imposed under the Summary Fine Rule.

The Exchange also is proposing to change some of the summary fine amounts in the Trading Conduct and Decorum Circular. The current fine for property damage is $500 for the first violation, $750 for the second violation and $1,000 for the third violation. The Exchange is proposing to increase the latter two fines to $1,000 for a second violation and $2,000 for a third violation.

The Exchange also is proposing to amend Rule 6.20(c) to clarify that the Exchange has the authority to direct members and persons employed by or associated with members to act or cease to act in a manner to ensure compliance with Exchange Rules.[10]

In addition, because the Exchange is consolidating all summary fine procedures under the Summary Fine Rule, the Exchange is proposing to amend Rule 6.20(c) by deleting the reference to Chapter XIX and its appeal procedures, because the appeal procedures for summary fines are set forth in the Summary Fine Rule. The proposed rule change also amends Rule 6.61, Interpretation and Policy .05(d) by deleting the last two sentences that relate to the authority of the Exchange to establish a fine schedule and refer violations to the Business Conduct Committee. The Exchange is deleting this language because it is attempting to consolidate summary fine authority under Exchange Rule 17.50. In addition, a member's failure to observe the procedures referenced in Interpretation and Policy .05 is subject to the disciplinary authority of the Business Conduct Committee under Chapter XVII of the Exchange's Rules, therefore making the cross-reference in Interpretation and Policy .05 unnecessary.[11] The Exchange also is proposing to clarify that non-member

[8] *See* Amendment No. 1, *supra* note 3.

[9] Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, Debora Barnes, Senior Attorney, CBOE, and Terri Evans, Attorney, Division, Commission, on September 1, 1998.

[10] Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, Debora Barnes, Senior Attorney, CBOE, and Terri Evans, Attorney, Division, Commission, on September 1, 1998.

[11] *See* Amendment No. 1, *supra* note 3.

joint venture participants have the right to appeal fines under the Summary Fine Rule.

The Exchange also proposes to amend Exchange Rule 6.51, Interpretation and Policy .01, by amending the final paragraph to delete the reference to the Floor Procedure Committee. This change is being proposed to conform the Exchange's Rule language with the Exchange's current practice. The Floor Procedure Committee is no longer involved in fining floor members who violate Rule 6.51(a) or (b); instead members are fined pursuant to the Summary Fine Rule.[12]

The Exchange is proposing that Rule 8.51 (''Firm Quote Rule'') be revised as well, to provide that floor officials may fine members of trading crowds under the Summary Fine Rule for violations of the Firm Quote Rule.[13] This change is being proposed to consolidate all of the minor rule violation authority of floor officials under the Summary Fine Rule, rather than having the Firm Quote Rule refer to Rule 6.20, which then refers back to the Summary Fine Rule. This proposed rule change also makes certain changes to clarify and incorporate Rule 6.20, the Summary Fine Rule, and the Trading Conduct and Decorum Circular into other Exchange Rules.[14]

III. Discussion

After careful review the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulation thereunder applicable to a national securities exchange.[15] Specifically, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act,[16] because the proposed rule change is designed to promote just and equitable principles of trade and protect investors and the public interest, discipline members who fail to comply with the Exchange's Rules, and provide for fair disciplinary procedures.

In the proposed rule change, the Exchange proposes, in part, to: (1) clarify that the Floor Procedure Committee is no longer involved in fining floor members for violating CBOE Rule 6.51(a) or (b); (2) consolidate summary fine authority under the Summary Fine Rule; and (3) clarify and incorporate Rule 6.20, the Summary Fine Rule and Trading Conduct and Decorum Circular into other Exchange Rules. The Commission believes that the proposed rule change clarifies the Exchange's disciplinary procedures and conforms the Exchange's Rules with current practice. The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] because the clarification and enhancement of the Exchange's summary fine plan promotes just and equitable principles of trade.

The Exchange also proposes to: (1) create a twelve-month look back period for assessing fines for second or subsequent offenses; (2) levy a fine for a first offense equal to the fine authorized for a second or third offense and impose a fine authorized for a third offense for a first or second offense based on the seriousness of the offense; (3) fine supervisory personnel who fail to adequately supervise associated persons; (4) add categories of behavior subject to summary fines as well as increase current fines; and (5) clarify that floor officials have the authority to direct members and persons employed by or associated with members to act or cease to act to achieve compliance with Exchange Rules. The Commission believes that these amendments to the Exchange's Rules and Trading Conduct and Decorum Circular are consistent with Section 6(b)(6) of the Act,[18] because the proposed changes provide for prompt, effective and appropriate discipline under the Exchange's Summary Fine Rule. Further, the proposed rule change encourages greater supervision of persons associated with members and compliance with the Exchange's Rules. The Commission notes that allowing the Exchange to create a twelve-month lookback period is consistent with the existing framework of graduated fines and may increase the Exchange's ability to deter repeat offenders. Further, the Commission believes that allowing the imposition of greater fines for first or second offenses should deter serious misconduct.

The Commission believes that the amendments to CBOE Rule 6.20, clarifying the appeals procedure for non-member joint venture participants and the appeals process under the Summary Fine Rule, are consistent with Section 6(b)(7) of the Act,[19] because the amendments help to ensure that the Exchange provides fair procedures for disciplining members, including joint venture participants that are treated as members of the Exchange for purposes of Exchange Rules 6.7 and 6.20. The Commission believes that the right to appeal sanctions helps to safeguard the procedural rights of sanctioned persons while preserving the Exchange's ability to adjudicate minor rule violations in a timely and efficient manner.

The Commission also believes that the Exchange's amendment to Exchange Rule 6.20 is appropriate in light of the practical need to allow service personnel on the trading floor. Further, the Commission believes that the President is the appropriate officer of the Exchange to grant the admission of other people onto the trading floor.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CBOE–98–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29341 Filed 11–2–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40604; File No. SR–CBOE–98–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Authority Over RAES Rejects

October 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission

[12] Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, Debora Barnes, Senior Attorney, CBOE, and Terri Evans, Attorney, Division, Commission, on September 1, 1998.

[13] The Exchange has issued separate circulars setting forth fine schedules for violations of Rule 8.51 with respect to OEX and DJX options. These circulars were approved by the Commission in SR–CBOE 96–31 and SR–CBOE–97–45.

[14] For example, in Amendment No. 1, the Exchange notes that it has deleted the reference to member organizations in certain of the rules proposed to be amended by the rule filing that also refer to members, because Section 1.1 of the Exchange Constitution defines the term ''member'' to include either an individual member or a member organization.

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5)–(b)(7).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(6).

[19] 16 U.S.C. 78f(b)(7).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 6.8(b) to allow either the Exchange's Vice Chairman or the Chairman of the appropriate Market Performance Committee (''MPC'') to allow transactions on the Exchange's Retail Automated Execution System (''RAES'') to be executed at the price of the best bid or offer in the Exchange book. Currently, CBOE Rule 6.8(b) requires both these individuals to make this decision. The text of the proposed rule change is available at the Office of the Secretary, CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit either the Exchange's Vice Chairman or the Chairman of the appropriate MPC to individually allow RAES to execute orders at the price of the best bid or offer in the Exchange's Book. Under current CBOE Rules, such a decision must be made jointly. Absent such a joint determination, Exchange Rules do not permit a trade to be executed on RAES when the prevailing market bid or offer equals the best bid or offer on the Exchange's customer limit order book (''Book''), and instead requires that related RAES orders be rejected and re-routed by the Order Routing System to the broker for manual representation.

For practical reasons, CBOE believes that it is necessary to have only one person make this decision instead of two. On the infrequent occasion when the prevailing market bid or offer equals the best bid or offer on the Exchange's customer limit order book, immediate action is required. In these situations, it is often extremely difficult to contact both people. For instance, either Vice Chairman or Chairman may not be in the vicinity of the Exchange or reachable; however, in this situation usually the other individual is reachable.

2. Statutory Basis

The Exchange believes that the proposed rule change enhances its ability to make competitive, fair and orderly markets in options. The Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(C)(ii)[3] of the Act in that it assures fair competition among markets. In addition, CBOE believes that the proposed rule change is in furtherance of Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[4] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commissions, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–CBOE–98–44 and should be submitted by November 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29342 Filed 11–2–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40605; File No. SR–NYSE–98–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., Relating to Delisting of Securities

October 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3]

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally submitted on August 24, 1998. However, the proposed rule

Continued

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to conform NYSE Rule 499, governing the suspension and delisting of securities, to the standards in Paragraph 802 of the Exchange's Listed Company Manual (''Manual''). The text of the proposed rule change is as follows: new text is italicized and deleted text is bracketed:

Suspension From Dealings or Removal From List by Action of the Exchange

* * * * *

Rule 499. Securities admitted to the list may be suspended from dealings or removed from the list at any time.

*** * * Supplementary Material**

.10 No change.

* * * * *

.20 NUMERICAL AND OTHER CRITERIA.—

* * * * *

The Exchange would normally give consideration to suspending or removing from the list a security of a company when:

1. [Number of shareholders is less than:] *Number of total stockholders is less than* ..... *400; or*
Number of total stockholders is less than [Holders of 100 shares or more (or of a unit of trading if less than 100 shares)]. 1,200 *and*

Average monthly trading volume (for most recent 12 months) is less than ..... *100,000 shares.*

The number of beneficial holders of stock held in the name of NYSE member organizations will be considered in addition to holders of record.

2. Number of publicly-held shares* is less than 600,000**

**Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.*

***If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.*

3. Aggregate market value of publicly-held shares,* subject to adjustment** depending on market conditions *is less than.* *$8,000,000*

[, within the following limits

Maximum $5,000,000

Minimum ..... $2,500,000]

* * * * * * *

4. Aggregate market value of shares outstanding (excluding treasury stock) is less than ..... *$12,000,000* [$8,000,000] and
Average net income after taxes for past 3 years is less than $600,000

5. Net tangible assets available to common stock are less than ..... *$12,000,000* [$8,000,000] and
Average net income after taxes for past 3 years is less than $600,000

6. For companies that, on listing, demonstrated earning power by meeting the listing standards requiring minimum levels of adjusted net income, and for companies that are currently valued on a ''cash flow'' basis, as described in Para. 102.01 of the Listed Company Manual: Aggregate market value of shares outstanding (excluding treasury stock) is less than. *$25,000,000*

And average adjusted net income for past 3 years is less than *$6,500,000*

{Renumber existing paragraphs 6 through 19 as 7 through 20, respectively.}

.30–.50 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–NYSE–96–07 (the ''1996 Filing'') the NYSE proposed, and the Commission approved, changes to Paragraph 802 of the Manual to add a new continued listing standard for companies that list pursuant to the Exchange's adjusted net income standard in Paragraph 102.01 of the Manual, or that are currently valued on a cash flow basis.[4] The 1996 Filing also raised certain other NYSE continued listing standards. Specifically, the 1996 Filing added new delisting criteria for ''cash flow'' companies, requiring that such companies have average adjusted net income for the most recent three years of at least $6.5 million and an aggregate market value of the company's shares of at least $25 million. That filing also: raised the continued listing criteria to $8 million in aggregate market value of publicly-held stock (from $5 million); raised the market value and net tangible asset tests, when coupled with an earnings test, to $12 million (from $8 million); and replaced the test that a company have at least 1,200 holders of at least 100 shares with a new continued listing test that a company have at least 1,200 total holders coupled with an average monthly trading volume of at least 100,000 shares for the most recent 12 months. In addition, the 1996 Filing added a stand-alone continued listing test that a company have a minimum of 400 total stockholders regardless of its trading volume.

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change was amended to make changes to the proposed rule language and provide a greater basis for the proposed rule change. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated October 7, 1998 (''Amendment No. 1''). Subsequently, the Exchange agreed to make an additional technical change to its rule language by replacing the phrase ''this Listed Company Manual'' with ''the Listed Company Manual'' in Rule 499.20(6). Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Terri L. Evans, Attorney, Division, Commission on October 22, 1998. Because the Exchange requested immediate effectiveness under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), the proposed rule change is deemed filed as of the date of filing of Amendment No. 1.

[4] *See* Exchange Act Release No. 37307 (June 12, 1996); Amendment No. 1, *supra* note 3.

Those standards currently are in effect.[5] The purpose of this proposed rule change, as amended, is merely to conform Rule 499 to the standards in effect as set forth in the Manual.[6]

2. Statutory Basis

The Proposed rule change is consistent with Section 6(b)(5) of the Act,[7] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is concerned solely with the administration of the Exchange and therefore, has become effective pursuant to Section 19(b)(3) of the Act[8] and Rule 19b–4(e)(3) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR–NYSE–98–26 and should be submitted by November 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29339 Filed 11–2–98; 8:45 am]

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[5] *See* Amendment No. 1, *supra* note 3.

[6] Currently pending before the Commission is a rule filing proposing additional changes to, among other things, the Exchange's continued listing standards, including Rule 499. *See* File No. SR–NYSE–98–21. If approved by the Commission, those standards would supersede the standards contained in this filing.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3).

[9] 17 CFR 240.19b–4(e)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40609; File No. SR–OCC–98–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees

October 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's first level clearing fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes to reduce the first level clearing fee it charges for established products for the fourth quarter of 1998. During the first three quarters of 1998, OCC has experienced a record volume of options cleared. As a result, OCC proposes to reduce the first level clearing fee for the remainder of 1998 from nine cents ($.09) to eight cents ($.08) per contract per side for all contracts cleared between October 1, 1998, through and including December 31, 1998. OCC similarly reduced its clearing fees during the fourth quarter of 1997. OCC believes that the foregoing fee change will assure each clearing member a discount on clearing fees and will enable clearing members to realize immediately the benefits of reduced fees without having to wait for a rebate by OCC of such fees and without adversely affecting OCC's ability to maintain an acceptable level of retained earnings.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it allocates fees among clearing members in an equitable manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and pursuant to Rule 19b–4(e)(2) [5] thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–12 and should be submitted by November 24, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e)(2).

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29385 Filed 11–2–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40603; International Series Release No. 1165; File No. SR–PCX–98–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Listing and Trading of Investment Company Units, Including World Equity Benchmark Shares ("WEBS")

October 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 1998, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt new rules to accommodate the trading, whether by listing or pursuant to unlisted trading privileges, of Investment Company Units ("Units"), including World Equity Benchmark Shares ("WEBS").

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to adopt new rules to accommodate the trading, whether by listing or pursuant to unlisted trading privileges, of Units. WEBS are among the Units which the Exchange may seek to trade.[3] WEBS are structured as shares of seventeen separate series ("Index Series"), each of which invests primarily in equity securities traded in a designated foreign market in an effort to track the performance of a specified foreign equity market index. The investment objective of each of the initial seventeen Index Series is to provide investment results that correspond generally to the price and yield performance of publicly traded securities in the aggregate in particular markets, as represented by a particular foreign equity securities index compiled by Morgan Stanley Capital International ("MSCI").

The Exchange notes that the Commission previously approved proposed rule changes submitted by the American Stock Exchange ("Amex") and the Chicago Stock Exchange ("CHX") to list and/or trade WEBS.[4]

a. Background & description. WEBS are issued by Foreign Fund, Inc., ("Fund") and are based on seventeen MSCI Indices (collectively "MSCI Indices," individually "MSCI Index"). The countries whose exchange markets are represented by the MSCI Indices are: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico, Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

The investment objective of each WEBS series is to seek to provide investment results that generally correspond to the price and yield performance of public securities traded in the aggregate in particular foreign markets, as represented by specific MSCI Indices. Each WEBS series will use a "passive" or indexing investment approach which attempts to

[3] The Commission notes that the Exchange intends to clarify whether: (i) The Exchange seeks solely to establish rules to accommodate the trading of Units, or (ii) the Exchange, in addition to establishing such rules, seeks to trade WEBS pursuant to unlisted trading privileges upon approval of the filing. This information will be reflected in any final approval order.

[4] *See* Securities Exchange Act Release Nos. 36947 (Mar. 8, 1996), 61 FR 10606 (Mar. 14, 1996) (approval of the Amex's request to list and trade Index Fund Shares, including WEBS); and 39117 (Sept. 22, 1997), 62 FR 50973 (Sept. 29, 1997) (approval of the CHX's request to trade WEBS pursuant to unlisted trading privileges).

approximate the investment performance of its benchmark index through quantitative analytical procedures.

A WEBS series normally will invest at least 95% of its total assets in stocks that are represented in the relevant MSCI Index and will at all times invest at least 90% of its total assets in such stocks. A WEBS series will not hold all of the issues that comprise the subject MSCI Index, but will attempt to hold a representative sample of the securities in the MSCI Index in a technique known as ''portfolio sampling.''

The Fund will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series (each aggregation is a ''Creation Union''). The number of shares per Creation Unit will range from 40,000 to 600,000.[5]

b. The MSCI Indices. MSCI generally seeks to have 60% of the capitalization of a country's stock market index reflected in the MSCI Index for such country. Thus, the MSCI Indices seek to balance the inclusiveness of an ''all share'' index against the replicability of a ''blue chip'' index. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

All single-country MSCI Indices are market capitalization weighted. For countries that restrict foreign ownership, MSCI calculates two types of indices: the MSCI Indices and additional indices called ''Free Indices.'' The Free Indices exclude companies and share classes that may not be purchased by foreigners. MSCI currently calculates Free Indices for Singapore and Mexico, and for those regional and international indices which include such markets. The Mexico and Singapore WEBS series will be based on the Free Indices for those countries.

All MSCI Indices are calculated daily. The calculation method weights stocks in an MSCI Index by their beginning-of-period market capitalization. Share prices are ''swept clean'' daily and adjusted for any rights issues, stock dividends or splits. The MSCI Indices presently are calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested.

Prices used to calculate the MSCI Indices are official exchange closing prices. All prices are taken from the predominant exchange in each market. To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. Because of the high volatility of currencies in some Latin American countries. MSCI continues to calculate its own rates for those countries. Under exceptional circumstances MSCI may elect to use an alternative exchange rate for any country if the WM/Ruters rate is believed not to be representative for a given currency on a particular day.

Each MSCI Index underlying a WEBS series is calculated by MSCI for each trading day in the applicable foreign exchange market based on official closing prices in such exchange market. For each trading day, MSCI publicly disseminates each MSCI Index value for the previous day's close. MSCI Indices are reported periodically in major financial publications and also are available through vendors of financial information.

The Fund will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS series. This information will be made available by the Fund Advisor to any National Securities Clearing Corporation (''NSCC'') participant requesting such information. In addition, other investors can request such information directly from the Fund distributor. The net asset value (''NAV'') for each WEBS series will be calculated directly by the Fund administrator, PFPC, Inc. The NAVs will be made available to the public from the Fund distributor by means of a toll-free number, and also will be available to NSCC participants through data made available from NSCC.[6]

The Exchange will distribute an information circular to its members in connection with the trading of WEBS. The circular will discuss the special characteristics and risks of trading this type of security. The following are among the items to be discussed in the circular: what WEBS are, how WEBS are created and redeemed, the requirement that members and member firms deliver a WEBS prospectus to investors purchasing WEBS prior to or concurrently with the confirmation of a WEBS transaction, applicable Exchange rules, dissemination information, trading information, and the applicability of suitability rules. The Exchange also intends to utilize its existing surveillance procedures to surveillance trading in WEBS, including surveilling specialist compliance with Exchange Rule 5.33(a), which contemplates specialists engaging in transactions with the issuer of WEBS under certain circumstances.

c. Proposed rule. The Exchange seeks to adopt new rules to accommodate the trading, whether by listing or pursuant to unlisted trading privileges, of Units that meet certain criteria. A Unit is a security that represents an interest in a registered investment company (''Investment Company'') which Investment Company could be organized as a unit investment trust, an open-end management investment company, or similar entity.

The Exchange proposes that the Investment Company must hold securities comprising, or otherwise based on or representing an interest in an index or portfolio or securities; or hold securities in another registered investment company that holds securities based on or representing an interest in an index or portfolio of securities. An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

Under the proposed rule change, the Investment Company must also issue Units in a specified aggregate number in return for a deposit (''Deposit'') consisting of either a specified number of shares of securities that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or shares of a registered investment company based on or representing an interest in, an index or portfolio or

[5] The Exchange notes that in the Amex's filing to list and trade WEBS, the Amex anticipated that the value at a Creation Unit at the start of trading would range from $450,000 to $10,000,000 and the net asset value of an individual WEBS security would range from $10 to $20. *See* Securities Exchange Act Release Nos. 36947 (Mar. 8, 1996), 61 FR 10606 (Mar. 14, 1996).

[6] The Exchange notes that in the Amex's WEBS filing, the Amex anticipated that it would provide current WEBS pricing information by disseminating through the facilities of the Consolidated Tape Association an indicative optimized portfolio value (''Value'') for each WEBS series as calculated by Bloomberg, L.P. The Value was to be disseminated on a per WEBS basis every fifteen seconds during regular Amex trading hours of 9:30 A.M. to 4:00 P.M. Eastern Standard Time. *Id.*

The Exchange believes such Value is unlikely to reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Exchange believes the Value would not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS series disseminated during Amex trading hours should not be viewed as a real-time update, of the NAV of the Fund, which is calculated only once a day. The Exchange recognizes, however, that during the trading day the Value will closely approximate the value, per WEBS share, of the portfolio of securities for each WEBS series, except under unusual circumstances.

securities, and/or a cash amount. Units must be redeemable, directly or indirectly, from the Investment Company for securities and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges, and there must be at least 300,000 Units outstanding prior to the commencement of trading of a series of Units on the Exchange.

The proposed rule change would allow the Exchange to trade, whether by listing or pursuant to unlisted trading privileges, specified series of Units, with each series based on a specified index or portfolio of securities. The value of the index or portfolio must be calculated and disseminated to the public at least once per business day; provided that, if the securities representing at least half the value of the index or portfolio are securities of a single country other than the United States, then the value of the index or portfolio may be calculated and disseminated to the public at least once per day in that country. Units may be either certified or issued in the form of a single global certificate.

Under the proposal, the Exchange may consider suspending trading and delisting (if applicable) a series of Units if after the initial twelve-month period beginning upon the commencement of trading of a series of Units: (i) there are fewer than 50 record and/or beneficial holders of Units for 30 or more consecutive trading days; (ii) the value of the index or portfolio of securities on which the series is based is no longer calculated or available; or (iii) such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Units from trading and listing (if applicable) upon termination of the issuing Investment Company or upon the termination of listing of the Units on their primary market, if the primary market is not the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and with Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C.. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–98–29 and should be submitted by November 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29338 Filed 11–2–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3144]

State of Missouri

As a result of the President's major disaster declaration on October 19, 1998, I find that Jackson and St. Louis Counties, and the City of St. Louis in the State of Missouri constitute a disaster area due to damages caused by severe storms and flooding which occurred July 10 through July 31, 1998. Applications for loans for physical damages may be filed until the close of business on December 18, 1998, and for loans for economic injury until the close of business on July 19, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cass, Clay, Franklin, Jefferson, Johnson, Lafayette, Ray, and St. Charles in the State of Missouri; Madison, Monroe, and St. Clair in the State of Illinois; and Johnson and Wyandotte in the State of Kansas may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	

	Percent
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 314411 and for economic injury the numbers are 9A4300 for Missouri, 9A4400 for Illinois, and 9A4500 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–29369 Filed 11–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3145]

State of Texas

As a result of the President's major disaster declaration on October 21, 1998, and an amendment thereto on October 23, I find that the following Counties in the State of Texas constitute a disaster area due to damages caused by severe storms, flooding, and tornadoes beginning on October 17, 1998 and continuing: Austin, Bastrop, Bexar, Burleson, Caldwell, Calhoun, Colorado, Comal, DeWitt, Fayette, Fort Bend, Goliad, Gonzales, Guadalupe, Harris, Hays, Jackson, Karnes, Montgomery, Refugio, Travis, Victoria, Waller, Wharton, and Wilson. Applications for loans for physical damage may be filed until the close of business on December 19, 1998 and for economic injury until the close of business on July 19, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aransas, Atascosa, Bandera, Bee, Blanco, Brazoria, Brazos, Burnet, Chambers, Galveston, Grimes, Kendall, Lavaca, Lee, Liberty, Live Oak, Matagorda, Medina, Milam, Robertson, San Jacinto, San Patricio, Walker, Washington, and Williamson Counties in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 314511 and for economic injury the number is 9A4600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 26, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–29368 Filed 11–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3115; Amendment #1]

State of Washington

As a result of the President's major disaster declaration on October 16, 1998, I find that Cowlitz County in the State of Washington constitutes a disaster area as a result of a landslide in the City of Kelso beginning on March 6, 1998 and continuing. This amends SBA's existing Administrative disaster declaration (3115) to comply with the requirements of a Major declaration by the President. Applications for loans for physical damage may be filed until the close of business on December 15, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clark, Skamania, Lewis, and Wahkiakum in the State of Washington, and Columbia County in the State of Oregon may be filed until the previously specified date.

All other information remains the same, i.e., the number assigned to this disaster for physical damage is 311509 and for economic injury the numbers are 995600 for Washington and 995700 for Oregon. The filing deadline for economic injury applications is April 30, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–29367 Filed 11–2–98; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration

Notice of District Office Name Changes

AGENCY: U.S. Small Business Administration.

ACTION: Notice of District Office Name Changes.

SUMMARY: The U.S. Small Business Administration has changed the names of the following district offices in order to more accurately reflect the broad geographic areas that they serve.

Old name	New name
Boston District Office, 10 Causeway Street, 2nd Floor, Room 265, Boston, MA 02222–1093.	Massachusetts District Office, 10 Causeway Street, 2nd Floor, Room 265, Boston, MA 02222–1093.
Providence District Office, 380 Westminster Mall, 5th Floor, Providence, RI 02903.	Rhode Island District, 380 Westminster Mall, 5th Floor, Providence, RI 02903.
Concord District Office, 143 North Main Street, Suite 202, Concord, NH 03301.	New Hampshire District Office, 143 North Main Street, Suite 202, Concord, NH 03301.
Augusta District Office, 40 Western Ave., Room 512, Augusta, ME 04330.	Maine District Office, 40 Western Ave., Room 512, Augusta, ME 04330.
Montpelier District Office, 87 State Street, Room 205, Montpelier, VT 05602.	Vermont District Office, 87 State Street, Room 205, Montpelier, VT 05602.
Hartford District Office, 330 Main Street, 2nd Floor, Hartford, CT 06106	Connecticut District Office, 330 Main Street, 2nd Floor, Hartford, CT 06106.

Old name	New name
Newark District Office, 2 Gateway Center, 4th Floor, Newark, NJ 07102	New Jersey District Office, 2 Gateway Center, 4th Floor, Newark, NJ 07102.
Hato Rey District Office, 252 Ponce de Leon Ave., Hato Rey, PR 00918.	Puerto Rico & USVI District Office, 252 Ponce de Leon Ave., Hato Rey, PR 00918.
Clarksburg District Office, 168 West Main Street, Clarksburg, WV 26301.	West Virginia District Office, 168 West Main Street, Clarksburg, WV 26301.
Charlotte District Office, 200 N. College Street, Suite A2015 Charlotte, NC 28202–2173.	North Carolina District Office, 200 N. College Street, Suite A2015, Charlotte, NC 28202–2173.
Columbia District Office, 1835 Assembly Street, Room 358, Columbia, SC 29201.	South Carolina District Office, 1835 Assembly Street, Room 358, Columbia, SC 29201.
Birmingham District Office, 2121 Eighth Ave., North, Ste.200, Birmingham, AL 35203.	Alabama District Office, 2121 Eighth Ave., North, Ste.200, Birmingham, AL 35203.
Atlanta District Office, 1720 Peachtree Road, NW, 6th Floor, Atlanta, GA 30309.	Georgia District Office, 1720 Peachtree Road, NW, 6th Floor, Atlanta, GA 30309.
Louisville District Office, 600 Dr. Martin Luther King Jr. Pl., Rm. 188, Louisville, KY 40202.	Kentucky District Office, 600 Dr. Martin Luther King Jr. Pl., Rm. 188, Louisville, KY 40202.
Nashville District Office, 50 Vantage Way, Suite 201, Nashville, TN 37228–1500.	Tennessee District Office, 50 Vantage Way, Suite 201, Nashville, TN 37228–1500.
Jackson District Office, 101 West Capitol Street, Suite 400, Jackson, MS 39201.	Mississippi District Office, 101 West Capitol Street, Suite 400, Jackson, MS 39201.
Minneapolis District Office, 100 North 6th Street, Ste. 610, Minneapolis, MN 55403–1563.	Minnesota District Office, 100 North 6th Street, Ste. 610, Minneapolis, MN 55403–1563.
Indianapolis District Office, 429 N. Pennsylvania, Suite 100, Indianapolis, IN 46204–1873.	Indiana District Office, 429 N. Pennsylvania, Suite 100, Indianapolis, IN 46204–1873.
Detroit District Office, 477 Michigan Avenue, Room 515, Detroit, MI 48226.	Michigan District Office, 477 Michigan Avenue, Room 515, Detroit, MI 48226.
Chicago District Office, 500 West Madison St., Suite 1250, Chicago, IL 60661–2511.	Illinois District Office, 500 West Madison St., Suite 1250, Chicago, IL 60661–2511.
Oklahoma City District Office, 210 Park Avenue, Suite 1300, Oklahoma City, OK 73102.	Oklahoma District Office, 210 NW Park Avenue, Suite 1300, Oklahoma City, OK 73102.
Little Rock District Office, 2120 Riverfront Drive, Suite 100, Little Rock, AR 72202.	Arkansas District Office, 2120 Riverfront Drive, Suite 100, Little Rock, AR 72202.
Albuquerque District Office, 625 Silver Avenue SW, Suite 320, Albuquerque, NM 87102.	New Mexico District Office, 625 Silver Avenue SW, Suite 320, Albuquerque, NM 87102.
New Orleans District Office, 1 Canal Place, Suite 2250, New Orleans, LA 70130.	Louisiana District Office, 1 Canal Place, Suite 2250, New Orleans, LA 70130.
Omaha District Office, 11145 Mill Valley Road, Omaha, NE 68154	Nebraska District Office, 11145 Mill Valley Road, Omaha, NE 68154.
Phoenix District Office, 2828 N. Central Avenue, Suite 800, Phoenix, AZ 85004–1025.	Arizona District Office, 2828 N. Central Avenue, Suite 800, Phoenix, AZ 85004–1025.
Las Vegas District Office, 301 East Stewart Street, RM 301, Las Vegas, NV 89125–2527.	Nevada District Office, 301 East Stewart Street, RM 301, Las Vegas, NV 89125–2527.
Honolulu District Office, 300 Ala Moana Boulevard, Rm. 2–235, Honolulu, HI 96850–4981.	Hawaii District Office, 300 Ala Moana Boulevard, Rm. 2–235, Honolulu, HI 96850–4981.
Anchorage District Office, 222 West 8th Avenue, Anchorage, AK 99513–7559.	Alaska District Office, 222 West 8th Avenue, Anchorage, AK 99513–7559.

DATES: Effective October 27, 1998.

FOR FURTHER INFORMATION CONTACT: Bradley Douglas, 202–205–6808.

Dated: October 27, 1998.

Bradley D. Douglas,

Associate Administrator for Field Operations.

[FR Doc. 98–29366 Filed 11–2–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration, Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on November 13, 1998, at 1:00 p.m.

ADDRESSES: The meeting will be held at Federal Aviation Administration, Office of Rulemaking Conference Room, Room 808, 800 Independence Ave., SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on November 13, 1998. The agenda for this meeting will include status reports on the All Weather Operations Working Group, the Airplane Performance Working Group, Fatigue Countermeasures Working Group, and the Reserve Duty/Rest Requirements Working Group. Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if

requested 10 calendar days before the meeting.

Issued in Washington, DC, on October 28, 1998.

Gary E. Davis,

Acting Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–29407 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–4461]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Chief, Division of Marine Insurance, Office of Subsidy and Insurance, Maritime Administration, MAR–575, Room 8117, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–4161 or FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: War Risk Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0011.

Form Numbers: MA–355; MA–528; MA–742; MA–828; and, MA–942.

Expiration Date of Approval: August 31, 1999.

Summary of Collection of Information: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1282), the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program. It consists of forms MA–355; MA–528; MA–742; MA–828; and MA–942.

Need and Use of the Information: The collected information is necessary to determine the eligibility of the applicant and the vessel(s) for participation in the war risk insurance program.

Description of Respondents: Vessel(s) owner or charterer interested in participation in MARAD's war risk insurance program.

Annual Responses: 1730.

Annual Burden: 930 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

Dated: October 28, 1998.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–29414 Filed 11–2–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 128X)]

Union Pacific Railroad Company—Abandonment Exemption—in San Antonio, Bexar County, TX (Austin Subdivision—''Old MKT Main Line'')

On October 14, 1998, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 2.16-mile line of railroad known as the Austin Subdivision (formerly known as the old MKT Main Line) extending from milepost 136.47 near South St. Marys Street to the end of the line at milepost 138.63 near Durango Street, in San Antonio, Bexar County, TX. The line traverses U.S. Postal Service Zip Code 78204 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 1, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 23, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 128X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before November 23, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on

the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Decided: October 27, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29434 Filed 11–2–98; 8:45 am]

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Federal Register

Tuesday
November 3, 1998

Part II

Securities and Exchange Commission

17 CFR Parts 200, 240, and 249
OTC Derivatives Dealers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, 249

[Release No. 34–40594; File No. S7–30–97]

RIN 3235–AH16

OTC Derivatives Dealers

AGENCY: Securities and Exchange Commission.
ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting rules and rule amendments under the Securities Exchange Act of 1934 that tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, that are active in over-the-counter derivatives markets. Registration as an OTC derivatives dealer under these rules is optional and is an alternative to registration as a broker-dealer under the traditional broker-dealer regulatory structure. It is available only to entities that engage in dealer activities in eligible over-the-counter derivative instruments and that meet certain financial responsibility and other requirements.

EFFECTIVE DATE: The rules and rule amendments shall become effective on January 4, 1999.

FOR FURTHER INFORMATION CONTACT:

General

Catherine McGuire, Chief Counsel, Patrice M. Gliniecki, Special Counsel, or Laura S. Pruitt, Special Counsel, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

Financial Responsibility and Books and Records

Michael Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–0177, Christopher Salter, Attorney, at (202) 942–0148, Victoria Pawelski, Attorney, at (202) 942–4169, Matt Hughey, Accountant, at (202) 942–0143, or Gary Gregson, Statistician, at (202) 942–4156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Introduction

Over-the-counter (''OTC'') derivative instruments are important financial management tools employed by many corporations, financial institutions, governmental entities, and other end-users. Participants in the OTC derivatives markets engage in transactions involving a wide range of instruments in order to effectively manage risks associated with their business activities or their financial assets.

Whether OTC derivatives transactions are structured as interest rate swaps, cross currency swaps, equity swaps, basis swaps, total return swaps, asset swaps, credit swaps, or options, they share certain characteristics.[1] For

[1] Swaps are contracts that typically allow the parties to the contract to exchange cash flows

example, each has a value or return related to the value or return of an underlying asset. Asset classes can consist of securities or virtually any other financial instrument, financial measure, or physical commodity, such as interest rates, securities indices, foreign currencies, metals or energy products, or spreads between the values of different assets. More importantly, each of these instruments can provide users with a carefully tailored method for managing a variety of risks.[2]

OTC derivative instruments, for example, can be used by corporations and local governments to lower funding costs, or by multinational corporations to manage risk associated with fluctuating exchange rates. They can also be used by portfolio managers to manage volatility in investment portfolios or to obtain exposure to different assets without taking a position in the cash markets. Because of the benefits these instruments offer, the derivatives markets have grown significantly over the past two decades.[3]

The traditional broker-dealer regulatory structure under the Securities Exchange Act of 1934 (''Exchange Act),[4] however, has not permitted a firm to operate a competitive OTC derivatives business in the United States that involves the broad range of OTC derivative instruments currently available to participants in these markets. While some of these OTC derivative instruments are securities, others are not. OTC options on equity securities or on U.S. government securities, for example, are securities within the meaning of section 3(a)(10) of the Exchange Act.[5] Firms that effect transactions in these or other OTC derivative instruments that are securities in the United States are required to register as broker-dealers under section 15(b) of the Exchange Act[6] and fulfill all requirements applicable to other securities broker-dealers, including Exchange Act rules governing margin and capital.

Traditional U.S. broker-dealer regulation seems particularly restrictive when contrasted with OTC derivatives activities that are conducted outside of the broker-dealer regulatory regime. Firms located off-shore can often structure their securities activities in a manner that will avoid or lessen the regulatory burdens imposed on broker-dealers under U.S. law. For example, off-shore firms can often avoid registering as broker-dealers in the United States if they engage in securities transactions only with non-U.S. persons, or if they comply with the requirements of Rule 15a–6 under the Exchange Act.[7]

Similarly, because U.S. banks are excluded from the Exchange Act definitions of ''broker'' and ''dealer,''[8] they are not subject to U.S. broker-dealer regulation. They, therefore, may engage in a broad range of OTC derivatives activities in accordance with guidance issued by their appropriate banking regulators.[9] In addition, firms that effect transactions only in OTC derivative instruments that are not securities are not subject to U.S. broker-dealer regulation.

The potential costs of broker-dealer regulation, as applied to dealers in OTC derivative instruments, have affected the way U.S. securities firms conduct business in the OTC derivatives markets. In many instances, U.S. securities firms have decided to separate their securities activities from their non-securities activities. These firms often place their non-securities OTC derivatives activities in separate, unregistered affiliates located in the United States, and conduct some or all of their securities OTC derivatives activities from abroad. However, fragmenting a firm's OTC derivatives business in this manner may hinder its ability to manage risk and compete for business.

For example, U.S. securities firms have voiced concerns regarding their ability to manage counterparty credit risk effectively under the traditional broker-dealer regulatory regime. Typically, in order to reduce credit exposure to a single counterparty, dealers in OTC derivative instruments enter into master agreements with their counterparties that provide for netting of the outstanding financial obligations existing between the dealers and their counterparties. As these firms have pointed out, it would be more efficient and effective to conduct both securities and non-securities OTC derivatives transactions with a counterparty through a single legal entity, subject to appropriately tailored regulatory requirements, rather than through multiple legal entities. The firms have also indicated that certain counterparties prefer to deal with a firm through a single entity that is capable of transacting business across a broad range of OTC derivative instruments.

B. The Proposing Release

In response to the concerns raised by firms seeking to conduct an OTC derivatives business in the United States, the Commission proposed to establish a form of limited broker-dealer regulation that would give the firms an opportunity to conduct business in a vehicle subject to modified regulation appropriate to the OTC derivatives markets.[10] This form of limited broker-dealer regulation was intended to allow securities firms to establish dealer

related to the value or performance of certain assets, rates, or indices for a specified period of time. *See generally* Peter A. Abken, Beyond Plain Vanilla: A Taxonomy of Swaps, *Financial Derivatives Reader* (Robert W. Kolb, ed.) (1992). Most swaps are based on currencies or interest rates. Swaps that provide for an exchange of values based on the value or performance of equity securities make up a small, but growing, share of the swaps market. Options are instruments that generally provide the holder, in exchange for the payment of a premium, with benefits of favorable movements in the underlying asset or index with limited or no exposure to losses from unfavorable price movements. Typically, OTC options provide for cash settlement, rather than the delivery of the underlying asset. Credit derivatives function like contingent options to the extent payments under the contract are triggered by the occurrence of a credit event, such as a decline in an issuer's credit rating or default in performance under a debt obligation.

[2] *See, e.g.*, Clifford W. Smith, Jr., Charles W. Smithson, and D. Sykes Wilford, Managing Financial Risk, *Financial Derivatives Reader* (Robert W. Kolb, ed.) (1992); Group of Thirty, *Derivatives: Practices and Principles* (July 1993), *Financial Derivatives: Actions Needed to Protect the Financial System*, United States General Accounting Office Report (May 1994).

[3] The International Swaps and Derivatives Association (''ISDA'') estimates that, as of December 31, 1996, the combined notional amount of globally outstanding interest rate swaps, currency swaps, and interest rate options has grown to over $29 trillion. *See* ''ISDA Market Survey,'' ISDA Internet web site (http://www.isda.org).

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 78c(a)(10)

[6] 15 U.S.C. 78o(b).

[7] 17 CFR 240.15a–6.

[8] *See* Section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)) (defining broker) and Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)) (defining dealer). The exclusion for banks from the definitions of ''broker'' and ''dealer'' under the Exchange Act is available only to those banking institutions that satisfy the definition of ''bank'' set forth in Section 3(a)(6) of the Exchange Act (15 U.S.C. 78c(a)(6)).

[9] Banking regulators have issued guidance to banks engaging in derivatives activities. *See e.g., Federal Financial Institutions Examination Council, Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities*, 63 FR 20191 (Apr. 23, 1998); *Federal Reserve Board, Trading and Capital-Markets Activities Manual* (1998) (including discussions of various derivative instruments, such as credit derivatives); *Federal Reserve SR Letter 97–21, Risk Management and Capital Adequacy of Exposures Arising from Secondary Market Credit Activities* (July 11, 1997); *Federal Reserve SR Letter 97–18, Application of Market Risk Capital Requirements to Credit Derivatives* (June 13, 1997); *FDIC FIL 62–96, Supervisory Guidance for Credit Derivatives* (Aug. 19, 1996); *Federal Reserve SR Letter 96–17, Supervisory Guidance for Credit Derivatives* (Aug. 12, 1996); *OCC Bulletin 96–43, Credit Derivatives* (Aug. 12 1996); *OCC Bulletin 96–25, Fiduciary Risk Management of Derivatives and Mortgage-Backed Securities* (Apr. 30, 1996); *OCC Bulletin 94–31, Questions and Answers for BC–277* (May 10, 1994); and *Risk Management of Financial Derivatives, OCC Banking Circular No. 277* (Oct. 1993).

[10] Exchange Act Release No. 39454 (Dec. 17, 1997), 62 FR 67940 (Dec. 30, 1997) (''Proposing Release'').

affiliates, referred to as ''OTC derivatives dealers,'' that would be able to compete more effectively with banks and foreign dealers in global OTC derivatives markets, while also maintaining standards necessary to ensure investor protection.

In the Proposing Release, the Commission specifically solicited comment on the extent to which persons eligible to become registered as OTC derivatives dealers believed that the proposal would address competitive inequalities that discouraged securities firms from conducting an OTC derivatives business in the United States. Commenters were also asked to express their views on the application of the Commission's broker-dealer rules to OTC derivatives dealers and whether additional amendments or exemptions were needed for this class of dealers.

The Commission received twenty-one comment letters in response to the proposed rules and rule amendments, including comments from, among others, industry representatives, self-regulatory organizations, and other regulators.[11] The majority of the commenters endorsed the Commission's initiative to develop an alternative regulatory framework for OTC derivatives dealers. These commenters supported the Commission's intent to provide a regulatory framework for OTC derivatives dealers that would enable these dealers to compete more effectively with both banks and foreign dealers in OTC derivatives markets. They often noted in particular their support of the Commission's efforts to address the regulatory costs imposed by existing capital requirements on securities firms seeking to operate an OTC derivatives business in the United States.[12]

The commenters, however, also suggested that the Commission modify the proposed rules and rule amendments in various ways to more accurately reflect the manner in which firms conduct an OTC derivatives business. Many commenters stressed the need for the alternative regulatory regime to establish a practical commercial framework for the conduct of this business and to provide U.S. securities firms with flexibility in structuring their derivatives activities.

C. Final Rules and Rule Amendments

1. General

After considering the comment letters, the Commission is adopting rules and rule amendments that will allow U.S. securities firms to establish separately capitalized entities that may engage in dealer activities in eligible OTC derivative instruments, which include both securities and non-securities OTC derivative instruments. OTC derivatives dealers are also permitted to engage in certain additional securities activities related to conducting an OTC derivatives business. A firm engaging in the permitted activities has the option of registering with the Commission under Section 15(b) of the Exchange Act[13] as an OTC derivatives dealer, subject to specially tailored capital, margin, and various other requirements.

These tailored requirements are intended, in part, to improve the efficiency and competitiveness of U.S. securities firms active in global OTC derivatives markets. By permitting U.S. securities firms to conduct both securities and non-securities OTC derivatives activities through a single legal entity, the new structure will enable the firms to enter into more comprehensive netting arrangements with counterparties and thus more effectively manage credit risk. End-users should also benefit as a result of a reduction in the legal risks that arise when securities firms structure their derivatives activities in a manner that avoids U.S. broker-dealer registration.[14] As noted by one commenter, all participants in the OTC derivatives markets have a vital interest in ensuring that OTC derivatives transactions are available in a framework where the legal rights and obligations of the parties to an agreement are certain and enforceable.[15] The new regulatory regime for OTC derivatives dealers is intended to help provide that legal certainty to these markets.

As a ''dealer'' under the Exchange Act,[16] an OTC derivatives dealer remains subject to all other rules applicable to ''fully regulated broker-dealers,'' [17] unless otherwise provided by the new rules and rule amendments. In addition, the Commission wishes to emphasize that purchasers and sellers of OTC derivative instruments that are securities will continue to be protected by the general anti-manipulation and anti-fraud provisions, including Section 17(a) of the Securities Act of 1933,[18] and Section 9(a)[19] and 10(b)[20] of the Exchange Act, and Rule 10b–5 thereunder.[21]

An OTC derivatives dealer also remains subject to all applicable statutes, rules, and regulations of other U.S. financial regulators. In particular, to the extent that the Commodity Exchange Act (''CEA'')[22] and the rules and regulations adopted under the CEA apply to the activities of an OTC derivatives dealer, the new regulatory structure in no way alters the application of these laws to the activities of an OTC derivatives dealer.

2. Scope of Permissible Securities Activities

In order to take advantage of the new regulatory regime for conducting an OTC derivatives dealer business in the United States, an OTC derivatives dealer must, among other things, limit its securities activities to those specified in Rules 3b–12 and 15a–1. In general, these rules provide that an OTC derivatives dealer's securities activities must be limited to (1) engaging in dealer activities in eligible OTC derivative instruments (as defined in Rule 3b–13) that are securities; (2) issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes; (3) engaging in cash management securities activities (as defined in Rule 3b–14); (4) engaging in ancillary portfolio management securities activities (as defined in Rule 3b–15); and (5) engaging in such other securities activities that the Commission designates by order.[23] An OTC

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[11] The staff of the Division of Market Regulation has prepared a summary of the comment letters received on the proposed rules and rule amendments entitled ''Comment Summary for Proposing Release on OTC Derivatives Dealers'' (hereinafter referred to as ''Comment Summary''). Copies of the comment letters and the Comment Summary have been placed in Public Reference File No. S7–30–97 and are available for inspection in the Commission's Public Reference Room.

[12] *See* Letters cited in Section II., n.1 of the Comment Summary.

[13] 15 U.S.C. 78o(b).

[14] *See, e.g.*, Comment Letter from the End-Users of Derivatives Association, Inc. (''EUDA Letter''). p. 1.

[15] *See* Comment Letter from the International Swaps and Derivatives Association, Inc. (''ISDA Letter''), pp. 1–2.

[16] *See* Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

[17] For purposes of this release, the term ''fully regulated broker-dealer'' means a broker or dealer that is registered with the Commission under section 15(b) of the Exchange Act (15 U.S.C. 78o(b)), but that is not an OTC derivatives dealer, and therefore is subject to all statutes, rules, and regulations imposed on broker-dealers under the transitional broker-dealer regulatory regime, including membership in a securities self-regulatory organization.

[18] 15 U.S.C. 78q(a).

[19] 15 U.S.C. 78i(a).

[20] 15 U.S.C. 78j(a).

[21] 17 CFR 240.10b–5. *See, e.g., In the Matter of BT Securities Corporation*, Exchange Act Release No. 35136 (Dec. 22, 1994).

[22] 7 U.S.C. 1 *et seq.*

[23] The alternative regulatory framework generally does not limit the non-securities activities of an OTC derivatives dealer, provided that the dealer complies with financial responsibility and internal risk management controls requirements. An OTC derivatives dealer's non-securities activities are also

derivatives dealer must also be affiliated with a fully regulated broker-dealer.[24]

The Commission has defined the terms ''cash management securities activities'' and ''ancillary portfolio management securities activities.'' [25] These two terms replace the term ''permissible risk management, arbitrage, and trading transactions,'' which was included in the Proposing Release. The new terms serve substantially the same purpose as the proposed term in that they describe the additional securities activities in which an OTC derivatives dealer may engage in connection with its OTC derivatives dealer business. As a practical matter, a firm seeking to register as an OTC derivatives dealer will need to be able to conduct these additional securities activities, such as engaging in certain financing and hedging transactions, in order to compete effectively with other market participants.

The final rules and rule amendments also contain restrictions to prevent U.S. securities firms from moving their general securities dealing activities into the new OTC derivatives dealer entity, or from using these entities for substantial proprietary trading activities. For example, the definitions of both ''cash management securities activities'' and ''ancillary portfolio management securities activities'' include limitations to prevent an OTC derivatives dealer from engaging in dealing activities in cash market instruments or from establishing a proprietary trading desk.

In addition, an OTC derivatives dealer's securities activities must consist primarily of dealer activities in eligible OTC derivative instruments that are securities, issuing and reacquiring its issued securities, and cash management securities activities. Thus, if the securities activities of an OTC derivatives dealer were to consist only or primarily of ancillary portfolio management securities activities, the dealer would be in violation of the rules.

a. *Eligible OTC Derivative Instruments.* As noted above, an OTC derivatives dealer is permitted to engage in dealer activities in ''eligible OTC derivative instruments,'' as that term is defined in Rule 3b–13. The term is defined broadly to encompass the wide range of securities and non-securities OTC derivative instruments currently existing in the derivatives markets, as well as to allow for the inclusion of reasonably similar instruments that market participants may develop in the future. The types of instruments that generally satisfy the criteria set forth in Rule 3b–13 include interest rate swaps, currency swaps, securities swaps, commodity swaps, OTC options on similar asset classes, long-dated forwards on securities, and forwards relating to assets other than securities. Other types of instruments also satisfy the criteria in the rule.

Short-dated securities forwards, however, are excluded from the definition of eligible OTC derivative instrument, as are securities derivative instruments that are listed or traded on a national securities exchange or on Nasdaq. Except as otherwise determined by the Commission by order, a securities derivative instrument that is one of a class of fungible instruments that are standardized as to their material economic terms is also excluded from the definition.

The new regulatory framework also allows an OTC derivatives dealer to issue and reacquire its issued securities, including hybrid securities. For purposes of Rules 3b–12 and 15a–1, which describe the permissible securities activities of an OTC derivatives dealer, the term ''hybrid security'' is defined as a security that incorporates payment features economically similar to the OTC derivative instruments that are enumerated in the definition.[26] The term ''hybrid security'' is used only in the context of an OTC derivatives dealer's permissible securities activities under the rules, and is not intended to have a broader application.

b. *Cash Management Securities Activities.* An OTC derivatives dealer may engage in ''cash management securities activities,'' as defined in Rule 3b–14. Under the rule, an OTC derivatives dealer may engage in cash management securities activities in connection with its permissible securities activities or its non-securities activities (that involve eligible OTC derivative instruments or other financial instruments). Cash management securities activities include (1) any acquisition or disposition of collateral provided by a counterparty, or any acquisition or disposition of collateral to be provided to a counterparty; (2) cash management; and (3) financing of certain positions of the dealer. Any securities trading activities associated with cash management by an OTC derivatives dealer must be at a level commensurate with the dealer's *bona fide* operational needs, taking into consideration the Commission's capital requirements for the dealer and the amount of capital needed by the dealer to satisfy counterparties' credit requirements.

c. *Ancillary Portfolio Management Securities Activities.* An OTC derivatives dealer may also engage in ''ancillary portfolio management securities activities,'' as defined in Rule 3b–15. These securities activities must be limited to transactions in connection with the OTC derivatives dealer's dealer activities in eligible OTC derivative instruments, the issuance of securities by the dealer, or such other securities activities that the Commission designates by order. They must also (1) be conducted for the purpose of reducing the dealer's market or credit risk or consist of incidental trading activities for portfolio management purposes; and (2) be limited to risk exposures within the market, credit, leverage, or liquidity risk parameters set forth in the trading authorizations granted to the associated person (or to the associated person's supervisor) who executes the transaction for the dealer, and in the written guidelines approved by the dealer's governing body and included in the dealer's internal risk management control system (as required under new Rule 15c3–4). Rule 3b–15 also requires that ancillary portfolio management securities activities be conducted only by associated persons of the dealer who perform substantial duties for the dealer in connection with its dealer activities in eligible OTC derivative instruments.

Again, the limitations on an OTC derivatives dealer's ancillary portfolio management securities activities under Rule 3b–15 are aimed at preventing a fully regulated broker-dealer from moving its securities book into its OTC derivatives dealer affiliate or otherwise permitting the OTC derivatives dealer to engage in substantial proprietary securities trading activities. An OTC derivatives dealer's ability to engage in incidental securities trading activities for portfolio management purposes under Rule 3b–15, however, recognizes

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restricted under this framework by the practical limitations imposed by the definitions of ''cash management securities activities'' and ''ancillary portfolio management securities activities.''

[24] As proposed, the alternative regulatory framework defined the term ''permissible derivatives counterparty,'' and required that an OTC derivatives dealer's counterparties be limited to such persons. In response to commenters' concerns, and in light of the protections afforded through other provisions of the alternative regulatory framework, the final rules do not restrict the persons that may act as counterparties in OTC derivatives transactions. The final rules, however, do not exempt OTC derivatives dealers or their fully regulated broker-dealer affiliates from counterparty limitations imposed under any other applicable regulatory or self-regulatory requirements.

[25] *See* Rules 3b–14 (17 CFR 240.3b–14) and 3b–15 (17 CFR 240.3b–15).

[26] *See* Rules 3b–12(d) (17 CFR 240.3b–12(d)) and 15a–1(e) (17 CFR 240.15a–1(e).

that the dealer may to a limited extent engage in securities trading activity that may not be for the specific purpose of reducing its market or credit risk.

The new regulatory structure for OTC derivatives dealers incorporates the concept of managing risk on a portfolio-wide basis and does not expressly limit the range of permissible ancillary portfolio management securities activities. Instead, these activities are limited by the requirement that they not give rise to risk exposures that, on an aggregate portfolio basis, exceed the risk limits adopted for the dealer's business under the rules. They are also limited by other requirements that serve to ensure that the OTC derivatives dealer does not engage in dealer activities in securities that are not eligible OTC derivative instruments. The final rules are intended to be flexible and to accommodate current business practices of OTC derivatives dealers. Because the rules define a broad scope of permissible securities activities, however, the restrictions on proprietary trading and dealing in cash market instruments may prove inadequate. Rule 15a–1 therefore preserves the Commission's ability to clarify, by order, whether certain securities activities are within the scope of ancillary portfolio management securities activities.[27]

3. Intermediation of Securities Transactions

Rule 15a–1 generally requires that all securities transactions of an OTC derivatives dealer, including securities OTC derivatives transactions, be effected through its fully regulated broker-dealer affiliate.[28] The intermediation requirement is designed, in part, to ensure that all securities transactions remain subject to existing sales practice standards and to reduce the risk that counterparties will mistakenly view an OTC derivatives dealer as a fully regulated broker-dealer. Certain professional counterparties, however, are less likely to need or expect the protections offered by the fully regulated broker-dealer under this framework. Therefore, the rules provide two limited exceptions to the broker-dealer intermediation requirement for securities transactions.

First, an OTC derivatives dealer is not required to use its fully regulated broker-dealer affiliate to effect securities transactions with a registered broker or dealer, a bank acting in a dealer capacity, a foreign broker or dealer, or an affiliate of the OTC derivatives dealer, provided that the counterparty is acting as principal. Second, if an OTC derivatives dealer engages in an ancillary portfolio management securities activity involving a foreign security, it is not required to effect that securities transaction through its fully regulated broker-dealer affiliate if a registered broker or dealer, a bank, or a foreign broker or dealer is acting as agent for the OTC derivatives dealer.

In addition, any person that solicits a potential counterparty to engage in a securities transaction with an OTC derivatives dealer, or otherwise has any contact with the counterparty regarding the transaction, generally must be a registered representative of the fully regulated broker-dealer affiliate.[29] These persons may be dual employees of both the OTC derivatives dealer and the fully regulated broker-dealer. However, if the counterparty is a registered broker or dealer, a bank acting in a dealer capacity, a foreign broker or dealer, or an affiliate of the OTC derivatives dealer, employees of the OTC derivatives dealer may solicit or have other forms of contact with the counterparty, even if they are not also registered representatives of the fully regulated broker-dealer. This is consistent with the exception for these same counterparties from the general requirement that an OTC derivatives dealer's securities transactions be effected through its fully regulated broker-dealer affiliate.

In addition, the rule does not require registered representatives of the fully regulated broker-dealer affiliate to be involved in contacts with foreign counterparties, in certain situations. Contacts with a foreign counterparty may generally be conducted by an associated person of a foreign broker or dealer who is not resident in the United States, if the foreign broker or dealer is affiliated with the OTC derivatives dealer and is registered under applicable local law. This approach recognizes the global nature of the OTC derivatives markets, and the practical limitations imposed by requiring registered representatives of the fully regulated broker-dealer affiliate to participate in all such contacts. Any resulting securities transaction, however, must generally be effected through the OTC derivatives dealer's fully regulated broker-dealer affiliate.

4. Exemptions for OTC Derivatives Dealers

The final rules and rule amendments provide exemptions from certain provisions of the Exchange Act to OTC derivatives dealers due to, among other things, the unique nature of this business. Specifically, OTC derivatives dealers are exempted from (a) membership in a securities self-regulatory organization (''SRO''); (b) certain margin requirements under the Exchange Act; and (c) the provisions of the Securities Investor Protection Act of 1970[30] (''SIPA''), including membership in the Securities Investor Protection Corporation (''SIPC'').[31]

a. *Exemption from SRO Membership.* Under Rule 15b9–2, OTC derivatives dealers are exempt from membership in an SRO. SRO membership for OTC derivatives dealers, and the additional regulation it entails, is not warranted at this time. As a practical matter, certain SRO rules are not consistent with the OTC derivatives dealer regulatory structure, and accordingly, should not apply directly to the OTC derivatives dealer. In addition, with limited exceptions, all securities transactions of an OTC derivatives dealer must be effected through its fully regulated broker-dealer affiliate, which will be an SRO member. As a result, SRO rules, including sales practice requirements, will generally apply to these securities transactions.

While the Commission had proposed that the designated examining authority (''DEA'') of the OTC derivatives dealer's fully regulated broker-dealer affiliate would review the OTC derivatives dealer's activities for violations of Commission rules, the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers, Inc. (''NASD'') expressed serious concerns with overseeing OTC derivatives dealers on a contractual basis (without the dealers being SRO members). The Commission staff, therefore, will examine OTC derivatives dealers to ensure compliance with Commission rules.

b. *Exemption from Certain Margin Requirements.* Federal regulations that govern the collateral, or margin, that must be collected by dealers in connection with securities transactions have created certain competitive inequalities between registered broker-

[27] *See* Rule 15a–1(b)(4) (17 CFR 240.15a–1(b)(4)).

[28] *See* Rule 15a–1(c) (17 CFR 240.15a–1(c)). An OTC derivatives dealer may issue and reacquire its issued securities through an unaffiliated fully regulated broker-dealer. *Id.*

[29] *See* Rule 15a–1(d) (17 CFR 240.15a–1(d)). The rule provides an exception for clerical and ministerial activities that are conducted by associated persons of the OTC derivatives dealer.

[30] 15 U.S.C. 78aaa *et seq.*

[31] In 1996, Congress added section 36 to the Exchange Act (15 U.S.C. 78mm), which gives the Commission broad authority to exempt any person from any of the provisions of the Exchange Act. The exemptions from certain margin requirements under the Exchange Act and from SIPA were adopted using this new exemptive authority.

dealers and other entities, including banks, that conduct an OTC derivatives business. Registered broker-dealers that extend credit for the purpose of purchasing or carrying securities are required to comply with the provisions of Regulation T.[32] The margin requirements for banks are contained in Regulation U.[33]

After the Commission issued the Proposing Release, several amendments to Regulation T were adopted that reduced the regulatory distinctions between broker-dealers and other lenders.[34] In general, Regulation T and Regulation U permit lenders to extend good faith credit against all non-equity securities and set specific limits on the amount of credit lenders can extend on equity securities.[35] However, several differences between Regulation T and Regulation U still remain, such as margin requirements for short OTC options. U.S. securities firms have indicated that because of these differences, applying Regulation T to their OTC derivatives business would continue to unnecessarily inhibit their ability to compete in the derivatives markets with banks and other lenders subject to Regulation U.

Given the nature of the bilateral financial instruments and the relative sophistication of the counterparties in the OTC derivatives markets, and the safeguards against excessive leverage contained in Regulation U, the requirements of Regulation U are more appropriate for the lending that occurs in these markets. Accordingly, under Rule 36a1–1, transactions involving extensions of credit by an OTC derivatives dealer are exempt from the provisions of Section 7(c) of the Exchange Act[36] and Regulation T, provided that the OTC derivatives dealer complies with Section 7(d) of the Exchange Act[37] and Regulation U.[38]

c. *Exemption from SIPA.* Under Rule 36a1–2, OTC derivatives dealers are exempt from the provisions of SIPA, including membership in SIPC. The application of SIPA's liquidation provisions to an OTC derivatives dealer in bankruptcy could undermine certain provisions of the bankruptcy code applicable to the dealer's business. As a result, the application of SIPA to OTC derivatives dealers would create legal uncertainty about the rights of counterparties in transactions with OTC derivatives dealers in the event of dealer insolvency. This uncertainty could impair the ability of securities firms electing to register OTC derivatives dealers to compete effectively with banks and foreign dealers, which are not subject to similar legal uncertainty.

5. Section 11(a) of the Exchange Act

Rule 11a1–6 provides an exception under section 11(a) of the Exchange Act[39] for certain transactions effected by a fully regulated broker-dealer for the account of its OTC derivatives dealer affiliate. Section 11(a) makes it unlawful for a member of a national securities exchange to effect transactions on that exchange for certain accounts, including its own account or the account of an associated person.

This general prohibition, however, is subject to numerous exceptions. Among these is a general exception under section 11(a)(1)(G) for a member's proprietary transactions, where the member is primarily engaged in a public securities business, as indicated by certain calculations involving the member's gross revenues from the preceding fiscal year (the ''business mix'' test), and the transactions ''yield,'' in accordance with Commission rules, priority, parity, and precedence to transactions for accounts of persons who are not members, or associated with members, of the exchange.[40]

Rule 11a1–2 under the Exchange Act generally permits a member to effect a transaction for the account of an associated person if the member could have effected the transaction for its own account. The rule, however, requires that the associated person independently meet the ''business mix'' test in order for the member to rely on the exception provided under Section 11(a)(1)(G) for transactions effected for the account of that associated person.

Because an OTC derivatives dealer will be a newly created entity, it will not be able to demonstrate that it meets this test. Accordingly, new Rule 11a1–6, like existing Rule 11a1–2, allows a fully regulated broker-dealer member to effect a transaction on the exchange for the account of an affiliated OTC derivatives dealer if the member would have been permitted to effect the transaction for its own account. Rule 11a1–6 allows the fully regulated broker-dealer to rely on the exception under section 11(a)(1)(G) for transactions it effects for its OTC derivatives dealer affiliate even if that affiliate does not meet the ''business mix'' test. The fully regulated broker-dealer and the OTC derivatives dealer must comply with all other requirements of section 11(a).

6. Net Capital Requirements

The net capital rule has been amended to include an alternative net capital regime for OTC derivatives dealers. Under the amendments, an OTC derivatives dealer will be subject to higher minimum capital requirements than a fully regulated broker-dealer. The OTC derivatives dealer, however, may also be authorized by the Commission to use value-at-risk (''VAR'') models to calculate capital charges for market risk and to take alternative charges for credit risk than those currently prescribed. The minimum capital requirements for an OTC derivatives dealer are tentative net capital of at least $100 million and net capital of at least $20 million. Under the circumstances, these minimum amounts will provide a sufficient liquid capital cushion for entities that elect to register as an OTC derivatives dealer.

In order to use VAR models to calculate capital charges for market risk and to take alternative charges for credit risk, under new Appendix F to Rule 15c3–1, an OTC derivatives dealer must file an application with, and obtain authorization from, the Commission. The application, among other things, must describe the OTC derivatives dealer's VAR model or models, including the manner in which the model or models meet the requirements specified in Appendix F, and the dealer's internal risk management controls system (as required under Rule 15c3–4). The OTC derivatives dealer must also describe in the application any non-marketable securities that it wants to include in its VAR calculation.

An OTC derivatives dealer's VAR model must meet certain qualitative and quantitative requirements under Appendix F that parallel rules currently followed by U.S. banking agencies. To meet the qualitative requirements, among other things, an OTC derivatives dealer must integrate its VAR model into the firm's daily risk management process, and subject its VAR model to stress tests, internal and external audits, and backtesting. The quantitative requirements contain statistical

[32] 12 CFR 220.1.

[33] 12 CFR 221.1.

[34] *See* Securities Credit Transactions, Borrowing by Brokers and Dealers, Docket Nos. R–0905, R–0923, and R–0944, 63 FR 2806 (Jan 16, 1998).

[35] *See, e.g.,* 12 CFR 221.2(f).

[36] 15 U.S.C. 78g(c).

[37] 15 U.S.C. 78g(d).

[38] Because Regulation U is promulgated pursuant to Section 7(d) of the Exchange Act, an OTC derivatives dealer remains subject to that provision. In addition, Rule 36a1–1 (17 CFR 240.36a1–1) applies only to extensions of credit *by* an OTC derivatives dealer. Section 7 of the Exchange Act continues to apply to persons extending credit *to* an OTC derivatives dealer. Credit extended to an OTC derivatives dealer, like credit extended to a fully regulated broker-dealer, however, is excepted from section 7 of the Exchange Act is it satisfies the conditions for such exceptions contained in section 7.

[39] 15 U.S.C. 78k(a).

[40] *See* 15 U.S.C. 78k(a)(1)(G).

parameters for VAR measures using a time horizon that is appropriate in the regulatory capital context, as well as risk factors that must be addressed in any model used. These parameters include the use of a ten-day holding period and a 99% confidence level.

An OTC derivatives dealer applying Appendix F must also compute a two-part credit risk capital charge, calculated on a counterparty-by-counterparty basis. The first part of the charge is calculated based on the net replacement value of all outstanding transactions with each counterparty after taking into account netting arrangements and possession of liquid collateral multiplied by a counterparty factor derived from the creditworthiness of that counterparty. The second part of the credit risk charge is a concentration charge that is also based on the creditworthiness of a particular counterparty, but that only applies when the net replacement value in the account of that counterparty exceeds 25% of the OTC derivatives dealer's tentative net capital.

Under Rule 15c3–4, an OTC derivatives dealer using Appendix F is also required to establish a comprehensive system of internal controls for monitoring and managing risks associated with its business activities. The establishment of a system of controls is an important element of the Commission's regulatory regime for OTC derivatives dealers. The risks that an OTC derivatives dealer's system of internal controls must specifically address include market, credit, leverage, liquidity, legal, and operational risks associated with conducting an OTC derivatives business.

The Commission will authorize an OTC derivatives dealer to use Appendix F if it determines that the dealer has met the requirements set forth in the rules relating to its VAR model and internal risk management control systems. In addition, an OTC derivatives dealer must file an application with the Commission before making any material changes to its VAR model or internal risk management control systems and receive authorization before implementing any such changes.

7. Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3

Under the new regulatory structure, a counterparty to an OTC derivatives transaction generally will not be considered a ''customer'' for purposes of Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3, the Commission's hypothecation and customer protection rules, and will not be protected by SIPA. In particular, except as otherwise agreed to in writing, if an OTC derivatives dealer notifies its counterparty that it will not segregate the collateral and may use the counterparty's collateral to further its own business operations, including commingling and pledging the counterparty's assets, the counterparty will not be considered a ''customer'' of the dealer for purposes of Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3.

8. Recordkeeping and Reporting

The rules governing recordkeeping and reporting for an OTC derivatives dealer have also been modified. The rules will remain substantially the same as for fully regulated broker-dealers, but they have been tailored to the business of OTC derivatives dealers. Reporting will be required only on a quarterly basis. The reports will include, among other things, information from the dealer regarding its VAR computations, as well as various credit concentration information.

II. Discussion: New Rules and Amended Rules

After consideration of the issues raised in comment letters concerning the alternative regulatory structure for OTC derivatives dealers, the Commission is adopting new Rules 3b–12, 3b–13, 3b–14, 3b–15, 11a1–6, 15a–1, 15b9–2, 15c3–4, 17a–12, 36a1–1, and 36a1–2 [41] under the Exchange Act.[42] The Commission is also amending Rule 30–3 of the Commission's rules of practice [43] and Exchange Act Rules 8c–1, 15b1–1, 15c2–1, 15c2–5, 15c3–1, 15c3–2, 15c3–3, 17a–3, 17a–4, 17a–5, and 17a–11.[44] In addition, the Commission is revising Form X–17A–5 (FOCUS report).[45]

A. Definitions

The final rules set forth definitions of four new terms: (1) OTC derivatives dealer; (2) eligible OTC derivative instrument; (3) cash management securities activities; and (4) ancillary portfolio management securities activities. Although the Commission had also proposed to define the term ''permissible derivatives counterparty,'' the Commission has determined that it is unnecessary to use the term in the final rules and rule amendments. In addition, the Commission is not adopting a separate rule defining ''hybrid security,'' as proposed, but rather is including a definition of ''hybrid security'' only for purposes of the final rules that use the term. The definitions of the new terms, and the reasons for adopting them in their revised forms, are described below.

1. Rule 3b–12; Definition of OTC Derivatives Dealer

As proposed, Rule 3b–12 would have defined OTC derivatives dealer to mean any dealer that limited its securities activities to (1) engaging as a counterparty in transactions in eligible OTC derivative instruments with permissible derivatives counterparties; (2) issuing and reacquiring issued securities through a fully regulated broker or dealer; or (3) engaging in other securities transactions that the Commission designated by order. The OTC derivatives dealer would also have been permitted to engage in ''permissible risk management, arbitrage, and trading transactions,'' in connection with any of these securities activities.

The proposed definition of OTC derivatives dealer was intended to identify a category of dealers that would primarily be engaged as counterparties in OTC derivatives transactions. The proposed definition also recognized that these dealers would need to engage in certain limited securities trading activities in connection with their OTC derivatives dealing activities in order to operate a competitive business. The Proposing Release, however, emphasized that an OTC derivatives dealer should not be able to take advantage of the modified regulatory requirements to engage in activities better suited to full broker-dealer regulation.[46]

Several commenters requested that the Commission clarify that the non-securities activities in which an OTC derivatives dealer would be permitted to engage would not be limited in either scope or volume (subject only to capital considerations).[47] The commenters were concerned that the language in the summary of the Proposing Release stating that registration as an OTC derivatives dealer was available only to entities acting *primarily* as counterparties in privately negotiated OTC derivatives transactions was

[41] 17 CFR 240.3b–12, 240.3b–13, 240.3b–14, 240.3b–15, 240.11a1–6, 240.15a–1, 240.15b9–2, 240.15c3–4, 240.17a–12, 240.36a1–1, and 240.36a1–2.

[42] 15 U.S.C. 78a *et seq.*

[43] 17 CFR 200.30–3.

[44] 17 CFR 240.8c–1, 240.15b1–1, 240.15c2–1, 240.15c2–5, 240.15c3–1, 240.15c3–2, 240.15c3–3, 240.17a–3, 240.17a–4, 240.17a–5, and 240.17a–11.

[45] 17 CFR 249.617.

[46] Proposing Release, Section II.A.1., n.17, 62 FR at 67942, n.17.

[47] *See* Comment Summary, Section IV.A.1.; Comment Letter from the Securities Industry Association's (''SIA'') OTC Derivative Products Committee, dated April 6, 1998 (''SIA Letter I''), p. 5; Comment Letter from Merrill Lynch & Co., Inc. (''Merrill Lynch Letter''), p. 4.

potentially inconsistent with the ability of these entities to engage in any non-securities activities.[48] In response to these comments, the Commission has revised the definition of OTC derivatives dealer to emphasize that the definition limits only the securities activities [49] of a dealer seeking to operate an OTC derivatives business under the new framework.[50]

Several commenters also questioned the proposed definition's limits on the scope of securities activities in which an OTC derivatives dealer could engage.[51] Merrill Lynch & Co., Inc. (''Merrill Lynch'') suggested that an OTC derivatives dealer should be permitted to engage in a full range of activities in *securities* derivative instruments (including acting as a dealer in such instruments).[52] Merrill Lynch also noted that there were numerous types of securities *principal* transactions in which an OTC derivatives dealer would need to engage to support its derivatives business. It expressed concern that any limitation on the nature or scope of such transactions could unnecessarily restrict, and in certain cases could increase the risk of, the dealer's derivatives business.[53] Other commenters believed that monitoring the limitations in the proposed rule could create unnecessary burdens for both the dealers and the Commission, and that the limitations were not always consistent with the manner in which an OTC derivatives business is currently conducted.[54]

Commenters also addressed the issue that the alternative regulatory structure for OTC derivatives dealers is not intended to permit U.S. securities firms to move their general securities dealing activities into an OTC derivatives dealer affiliate or to establish proprietary securities trading desks in the new entity.[55] In this regard, the Government Finance Officers Association (''GFOA'') questioned whether the proposal provided sufficient safeguards to ensure that a firm did not move its dealer activity in cash market instruments, such as stocks and bonds, to an OTC derivatives dealer.[56] Other commenters, however, believed that the proposal contained enough restrictions on securities dealing activities to avoid such behavior by an OTC derivatives dealer acting in good faith.[57]

Taking these comments into account, the final rule provides that an OTC derivatives dealer is a dealer that is affiliated with a registered broker or dealer (other than an OTC derivatives dealer) and whose securities activities are limited to (1) engaging in dealer [58] activities in eligible OTC derivative instruments that are securities; (2) issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities,[59] and structured notes;[60] (3) engaging in cash management securities activities (as defined in Rule 3b–14); (4) engaging in ancillary portfolio management securities activities (as defined in Rule 3b–15); and (5) engaging in such other securities activities that the Commission designates by order.

As detailed in Section II.A.5. below, the Commission has defined the terms ''cash management securities activities'' and ''ancillary portfolio management securities activities.'' These two terms replace the term ''permissible risk management, arbitrage, and trading transactions,'' which was included in the Proposing Release. The new terms serve substantially the same purpose as the proposed term in that they describe the additional securities activities in which an OTC derivatives dealer may engage in connection with its OTC derivatives business. As a practical matter, a firm seeking to register as an OTC derivatives dealer will need to be able to conduct these additional securities activities, such as engaging in certain financing and hedging transactions, in order to compete effectively with other market participants.

The focus of the alternative regulatory structure for OTC derivatives dealers, however, is on providing a regulatory vehicle that will allow a U.S. securities firm to establish a separately capitalized entity through which to book an OTC derivatives business. As a result, the final rules, including the definitions of ''cash management securities activities'' and ''ancillary portfolio management securities activities'' contain appropriate limitations to prevent an OTC derivatives dealer from engaging in dealing activities in cash market instruments or in substantial proprietary trading activities.

Rule 3b–12, as adopted, also requires that the securities activities of an OTC derivatives dealer consist primarily of engaging in dealer activities in eligible OTC derivative instruments that are securities, issuing and reacquiring its issued securities, and engaging in cash management securities activities. Thus, if the securities activities of an OTC derivatives dealer were to consist only or primarily of ancillary portfolio management securities activities, the OTC derivatives dealer would be in violation of the rule. For instance, an OTC derivatives dealer that trades in exchange-traded futures contracts may not engage in securities activities that consist only or primarily of managing the risks of those futures transactions.

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[48] *See, e.g.,* SIA Letter I, p. 5.

[49] As a practical matter, the non-securities activities of an OTC derivatives dealer are limited by the capital requirements and by the limits imposed on cash management and ancillary portfolio management securities activities under this regulatory structure. This parallels the system for fully regulated broker-dealers, which does not prohibit non-securities activities by definition, but rather imposes practical limitations on those activities under the financial responsibility rules.

[50] In its comment letter, the Commodity Futures Trading Commission (''CFTC'') stated that the proposal for the alternative regulatory framework for OTC derivatives dealers extended beyond the Commission's authority to regulate securities. *See* Comment Letter from the CFTC (''CFTC Letter''), p. 1. While the proposal was appropriately restricted in scope to fall within the Commission's statutory jurisdiction, the revisions made to Rule 3b–12 (17 CFR 240.3b–12), as well as to the other rules and rule amendments, that strengthen the focus of the new regulatory framework on the securities activities of an OTC derivatives dealer serve to clarify the scope of the Commission's jurisdiction.

[51] *See* letters cited in Section IV.A.2. of the Comment Summary.

[52] Merrill Lynch Letter, p. 4.

[53] Merrill Lynch Letter, p. 5. Similarly, the SIA commented that, so long as an OTC derivatives dealer limited its securities dealing activities to transactions in eligible OTC derivative instruments with permissible derivatives counterparties, it was neither necessary nor desirable to limit the non-dealing securities activities of an OTC derivatives dealer. SIA Letter I, p. 6.

[54] *E.g.,* SIA Letter I, p. 6.

[55] *See, e.g,* Proposing Release, Section II.A.1., n.17, 62 FR 67942, n.17.

[56] Comment Letter from the Government Finance Officers Association (''GFOA Letter''), p. 3.

[57] *E.g.,* Comment Letter from Morgan Stanley Dean Witter (''MSDW Letter''), p. 10. In addition, one commenter suggested a simple prohibition on that business instead of a series of detailed and complex prophylactic limitations on the permissible activities of an OTC derivatives dealer. Comment Letter from Salomon Smith Barney (''Salomon Smith Barney Letter''), p. 2.

[58] When used in the context of eligible OTC derivative instruments (as defined in Rule 3b–13 (17 CFR 240.3b–13) or in the context of OTC derivative instruments in general, the term ''dealer'' activities includes buying, selling, and entering into OTC derivative instruments. *See* Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)) (defining dealer).

[59] *See* Section II.A.4. below, discussing the definition of the term ''hybrid security.''

[60] In the Proposing Release, the requirement that an OTC derivatives dealer issue or reacquire its issued securities through a fully regulated broker or dealer (other than an OTC derivatives dealer) was set forth in proposed Rule 3b–12(a)(2), as well as in proposed Rule 15a–1(a)(1)(ii), regarding the permissible securities activities of an OTC derivatives dealer. This requirement, however, has been omitted from final Rule 3b–12, and included only in final Rule 15a–1(c). In this regard, while the securities transactions of an OTC derivatives dealer generally must be effected through an affiliated fully regulated broker-dealer, an OTC derivatives dealer may issue and reacquire its issued securities through an unaffiliated fully regulated broker-dealer. *See* Rule 15a–1(c) (17 CFR 240.15a–1(c)) (discussed in Section II.C.3. below).

In addition, Rule 3b–12 expressly states that an OTC derivatives dealer's securities activities may not consist of any securities activities other than those included in the rule, including engaging in any transaction in any security that is not an eligible OTC derivative instrument, except for cash management securities activities, ancillary portfolio management securities activities, and such other securities activities that the Commission may designate by order. This position is consistent with the general principle that a broker-dealer is not permitted to move dealer activities in cash market instruments into the OTC derivatives dealer.[61]

As some commenters noted, the ability of the Commission to issue orders under Rule 15a–1(b)(1) identifying other permissible securities activities in which an OTC derivatives dealer may engage should help to mitigate concerns that the definition sets forth specific limitations on the securities activities of these entities.[62] As provided in the Proposing Release, the Commission is amending Rule 30–3 of the Rules of Practice to delegate its authority to issue these orders to the Director of the Division of Market Regulation.[63]

[61] As stated in the Proposing Release, except to the extent expressly permitted under the rules and rule amendments, an OTC derivatives dealer may not engage directly or indirectly in any activity that may otherwise cause it to be a ''dealer'' as defined in Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)). This includes, but is not limited to, without regard to the security, (1) purchasing or selling securities as principal from or to customers; (2) carrying a dealer inventory in securities (or any portion of an affiliated broker-dealer's inventory); (3) quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities) in connection with the purchase or sale of securities permitted under Rule 15a–1; (4) holding itself out as a dealer or market-maker or as being otherwise willing to buy or sell one or more securities on a continuous basis; (5) engaging in trading in securities for the benefit of others (including any affiliate), rather than solely for the purpose of the OTC derivatives dealer's investment, liquidity, or other permissible trading objective; (6) providing incidental investment advice with respect to securities; (7) participating in a selling group or underwriting with respect to securities; or (8) engaging in purchases or sales of securities from or to an affiliated broker-dealer except at prevailing market prices. *See* Proposing Release, Section II.A.4., n.24, 62 FR at 67944, n.24.

[62] *See, e.g.,* SIA Letter I, pp. 6–7. *See also* Rule 15a–1(b)(1) (17 CFR 240.15a–1(b)(1)) and Section II.C.2. below, discussing the ability of the Commission to issue orders under Rule 15a–1(b) (17 CFR 240.15a–1(b)) regarding the securities activities of OTC derivatives dealers.

[63] Proposing Release, Section II.C., n.27, 62 FR at 67944, n.27. *See* Rule 30–3(a)(64) (17 CFR 200.30–3(a)(64)).

2. Rule 3b–13; Definition of Eligible OTC Derivative Instrument

An OTC derivatives dealer is permitted to engage in dealer activities in eligible OTC derivative instruments, as that term is defined in Rule 3b–13. As proposed, Rule 3b–13 would have defined ''eligible OTC derivative instrument'' to mean any agreement, contract, or transaction (1) that is not part of a fungible class of agreements, contracts, or transactions that are standardized as to their material economic terms; (2) that is based, in whole or in part, on the value of, any interest in, any quantitative measure of, or the occurrence of any event relating to, one or more securities, commodities, currencies, interest or other rates, indices, or other assets, or involve certain long-dated forward contracts, specifically contracts to purchase or sell a security on a firm basis at least one year following the transaction date; [64] and (3) that is not entered into and traded on or through an exchange, an electronic marketplace, or similar facility supervised or regulated by the Commission, or any other multilateral transaction execution facility.[65]

Several commenters criticized this proposed definition.[66] For example, the SIA argued that the proposed definition failed to include certain important categories of transactions, such as transactions that are based on the occurrence or nonoccurrence of specified events, but that do not technically relate to one or more securities, commodities, and the like, although they are associated with financial consequences, such as credit derivatives.[67] Morgan Stanley Dean Witter argued that the requirement that eligible OTC derivative instruments be based on at least one of an enumerated list of underlying assets could unnecessarily limit these dealers' activities in rapidly evolving products while Commission approval was being sought on a product-by-product basis.[68]

The SIA also suggested alternative definitions of ''eligible OTC derivative instrument'' and recommended that the Commission clarify that it was not intending to construe or expand the definition of ''security'' under the Exchange Act.[69] Several commenters asked that the Commission clarify what instruments would be considered ''securities'' OTC derivative instruments and ''non-securities'' OTC derivative instruments for purposes of the rules.[70] Merrill Lynch agreed in principle with the approach of proposed Rule 3b–13, but also suggested that an OTC derivatives dealer be able to seek expedited interpretative guidance for new derivative instruments.[71]

Several commenters were also concerned that the proposed definition required that forwards have a duration period of one year or more in order to qualify as an eligible OTC derivative instrument, and suggested shorter periods, such as one month or two weeks.[72] The SIA suggested that, in including a duration period for forwards, the definition should distinguish between government securities forwards and forwards involving non-government securities.[73] In addition, the SIA maintained that those securities forwards having material features of a type described in the definition of eligible OTC derivative instrument should qualify as eligible OTC derivative instruments.[74]

Several commenters raised concerns with the use of concepts from the CEA in defining the term eligible OTC derivative instrument. In its comment letter, the Commodity Futures Trading Commission (''CFTC'') noted that the proposed definition relied on criteria that were similar to, but not the same as, the criteria for qualifying transactions under the CFTC's part 35 swaps exemption.[75] The CFTC stated that a registered OTC derivatives dealer could effect transactions that would be permissible under the proposed rules, but that would not be exempted under part 35 from the provisions of the CEA, and thus market participants might face legal uncertainty concerns in entering into certain derivatives transactions.

On a similar note, two commenters were concerned that the proposed

[64] The concern with forwards is that an OTC derivatives dealer should not be able to engage in dealer activities in short-dated securities forwards that may in effect replicate cash market instruments or in certain government securities forwards, such as Government National Mortgage Association (GNMA) forwards.

[65] Proposing Release, Section II.A.2., 62 FR at 67942.

[66] *See* letters cited in Section IV.B. of the Comment Summary.

[67] SIA Letter I, pp. 9–10; *see also* Merrill Lynch Letter, p. 7.

[68] MSDW Letter, p. 6.

[69] SIA Letter I, p. 10. *See also* Comment Letter from SIA, dated October 16, 1998 (''SIA Letter II''), pp. 2–3.

[70] EUDA Letter, p. 2; GFOA Letter, p. 1; Comment Letter from the New York Stock Exchange (''NYSE Letter''), p. 3.

[71] Merrill Lynch Letter, p. 7.

[72] SIA Letter I, pp. 9–10; Merrill Lynch Letter, p. 7; Comment Letter from D.E. Shaw & Co. L.P. (''DESCO Letter''), p. 7.

[73] SIA Letter II, p. 2.

[74] *Id.*

[75] CFTC Letter, pp. 11–12. The CFTC's Part 35 regulations exempt certain swap transactions from most provisions of the CEA, provided that the transaction is conducted solely between ''eligible swap participants,'' as defined in part 35 (17 CFR part 35).

definition adopted concepts from the CEA in excluding transactions that were standardized or traded on ''an exchange, an electronic marketplace, or similar facility supervised or regulated by the Commission, or any other multilateral transaction execution facility.'' [76] The SIA argued that the text potentially could exclude from the definition a broad range of transactions involving exempt securities, as well as transactions that did not involve securities at all, which it believed should not be excluded from the proposed definition. The SIA also opined that the proposed language would spawn significant uncertainty over its scope.[77] Morgan Stanley Dean Witter similarly claimed that the use of terms contained in the CEA that were not commonly understood in the securities law context caused the definition of ''eligible OTC derivative instrument'' to be ambiguous.[78]

In response to these comments, the Commission has revised the definition of eligible OTC derivative instrument in several ways. As adopted, Rule 3b–13 defines eligible OTC derivative instrument to mean, subject to certain exceptions, any contract, agreement, or transaction that provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, one or more commodities, securities, currencies, interest or other rates, indices, quantitative measures, or other financial or economic interests or property of any kind, or that involves any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence, or any combination or permutation of the foregoing.[79] The term eligible OTC derivative instrument, however, does not include certain forwards on securities, securities listed or traded on a national securities exchange or on Nasdaq, or fungible securities derivative instruments that are standardized as to their material economic terms.[80]

Rule 3b–13 defines eligible OTC derivative instrument broadly to encompass the wide range of securities and non-securities OTC derivative instruments currently existing in the derivatives markets, as well as to allow for the inclusion of reasonably similar instruments that market participants may develop in the future. The types of instruments that generally satisfy the criteria set forth in Rule 3b–13 include interest rate swaps, currency swaps, equity swaps, swaps involving physical commodities (such as metals or petroleum), OTC options on equities (including equity indices), OTC options on U.S. government securities, OTC debt options (including options on debt indices), options on physical commodities, long-dated forwards on securities, and forwards relating to other types of assets. Other types of instruments also satisfy the criteria in the rule.

The definition of eligible OTC derivative instrument has also been revised to omit terms commonly understood in the context of the CEA. As a technical matter, exchange-traded futures will now fall within the definition of eligible OTC derivative instrument. As discussed in Section II.A.1. above, however, the rules limit only the *securities* activities of an OTC derivatives dealer, and, subject to appropriate capital treatment and compliance with internal risk management controls requirements, an OTC derivatives dealer generally may engage in any non-securities activities. Thus, the new regulatory structure does not limit an OTC derivatives dealer's ability to engage in futures activities, which is consistent with the current approach toward the regulation of general securities broker-dealers. The activities of an OTC derivatives dealer, however, must comply with any and all applicable laws, including the CEA to the extent it applies to any particular transaction.

In response to comments raised by the SIA,[81] the final rule also distinguishes between government securities forwards and other securities forwards with respect to duration periods. Rule 3b–13 generally excludes from the definition of eligible OTC derivative instrument forwards on a government security that settle within twelve months, and certain other securities forwards that satisfy the definition of ''eligible forward contract'' [82] that settle within four months.[83] Although the duration period for an ''eligible forward contract'' is shorter than the original proposal of one year for all securities forwards, the periods better reflect the manner in which an OTC derivatives business is conducted and will continue to constrain an OTC derivatives dealer from improperly engaging in the types of forward transactions that should occur in its fully regulated broker-dealer affiliate.[84] The final rule has also been revised to include as eligible OTC derivative instruments those securities forwards that have material economic features primarily of a type described in the definition of eligible OTC derivative instrument (other than the provision for the purchase and sale of a security on a firm basis).

The definition of eligible OTC derivative instrument excludes securities derivative instruments that are listed or traded on an exchange or on Nasdaq. Similarly, the definition excludes those securities derivative instruments that are one of a class of fungible instruments that are standardized as to their material economic terms. With respect to the exclusion for certain fungible instruments, the Commission has retained the authority under Rule 15a–1(b)(2) to determine by order that a securities derivative instrument that is one of a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument. This

[76] SIA Letter I, pp. 9–10; MSDW Letter, pp. 7–8.

[77] SIA Letter I, p.9.

[78] MSDW Letter, pp. 7–8.

[79] Rule 3b–13(a) (17 CFR 240.3b–13(a).

[80] *See* Rule 3b–13(b) (17 CFR 240.3b–13).

[81] *See supra* note 73.

[82] For purpose of Rule 3b–13, the term ''eligible forward contract'' means ''a forward contract that provides for the purchase or sale of a security other than a government security, provided that, if such contract provides for the purchase or sale of margin stock (as defined in Regulation U of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 221), such contract either (1) provides for the purchase or sale of such stock by the issuer thereof (or an affiliate that is not a bank or a broker or dealer); or (2) provides for the transfer of transaction collateral in an amount that would satisfy the requirements, if any, that would be applicable assuming the OTC derivatives dealer party to such transaction were not eligible for the exemption from Regulation T of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 220, set forth in (Rule 36a1–1).

[83] In its comment letter, the SIA requested guidance regarding the application of the duration requirement for securities forwards in the context of certain transaction structures that require a forward to be market-to-market and repriced. *See* SIA Letter II, p. 2, n.1. For example, a contract may provide that it is to be periodically marked-to-market and repriced with a settlement payment to be made on each repricing date in an amount equal to the change in the value of the underlying security. *Id.* In response to the SIA's request, under Rule 3b–13, where a securities forward transaction provides for reset or repricing dates, such dates will be viewed as settlement dates, and will cause the forward to be separated into shorter duration periods, only if the parties can close out the transaction on such dates. For example, if a one-year securities forward resets monthly to mitigate the credit risk associated with the transaction, and the parties can close out the forward on the reset date, for purposes of Rule 3b–13, the transaction will be regarded as separate one-month forward transaction. If, however, the parties are not able to close out the forward, or otherwise discharge their obligations under the contract by accelerating all or part of the originally scheduled physical settlement, on the reset dates, then the reset dates will not be viewed as separate settlement dates.

[84] A fully regulated broker-dealer is not permitted to move its securities book to the OTC derivatives dealer by forwarding out its positions and then reversing those transactions. *See* Rule 15a–1(a) (17 CFR 240.15a–1(a).

authority will permit the Commission, in limited circumstances, to expand the types of securities derivative instruments in which an OTC derivatives dealer may engage in dealer activities. The Commission is amending Rule 30–3 of the Rules of Practice to delegate this authority to the Director of the Division of Market Regulation.[85]

As noted above, the Commission responded to commenters' concerns by adopting an expansive definition of eligible OTC derivative instrument, with few exclusions. The final rule thereby permits an OTC derivatives dealer to deal in a broad array of financial instruments in order to accommodate current business practices.[86] Because of this accommodation, however, the Commission has also reserved the authority under Rule 15a–1(b) to issue orders clarifying whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument.[87]

The final rules, however, do not define the term ''securities OTC derivative instrument,'' which is intended to encompass OTC derivative instruments that are securities. The term ''security'' is defined in section 3(a)(10) of the Exchange Act,[88] and the final rules do not interpret or amend the definition of ''security'' under the Exchange Act. Staff guidance will continue to remain available regarding the applicability of the federal securities laws to any particular OTC derivative instrument.[89]

3. Proposed Rule 3b–14; Definition of Permissible Derivatives Counterparty

Proposed Rule 3b–14 defined those entities and natural persons that would have been eligible to engage in an OTC derivatives transaction with an OTC derivatives dealer. As the Proposing Release noted, these persons included the same persons who currently are eligible to effect transactions with swaps dealers under the CFTC's Part 35 regulations.[90] The Proposing Release also sought specific comment on whether the definition of permissible derivatives counterparty should be expanded to include natural persons having at least $5 million in total assets who entered into OTC derivatives transactions to hedge existing or anticipated assets or liabilities.[91]

Most commenters suggested that a broad range of persons should be able to act as permissible derivatives counterparties, and believed that the definition should be expanded, at a minimum, to include natural persons having at least $5 million in total assets as proposed.[92] The SIA opined that these natural persons were appropriate counterparties and would benefit from having access to risk mitigation products that could be tailored to their individual circumstances and objectives.[93]

A few commenters, however, raised concerns that the proposed group of permissible derivatives counterparties could include unsophisticated persons who would need the protections provided by the securities sales practice requirements.[94] D.E. Shaw & Co. noted that an OTC derivatives dealer would have to rely upon information provided by the counterparty as to its total assets or net worth, and suggested that an OTC derivatives dealer should only be required to have a ''reasonable belief'' that the counterparty was a ''permissible derivatives counterparty.'' [95]

The CFTC, in turn, raised concerns that conflicts might arise between the Commission's rules and the CFTC's rules in connection with the proposed definition of permissible derivatives counterparty, particularly if the definition were expanded to include parties who would not be eligible swap participants under the CFTC's Part 35 regulations. The CFTC suggested that if an OTC derivatives dealer were to enter into a transaction with a permissible derivatives counterparty that was not an eligible swap participant, the transaction would be outside the exemption of the Part 35 regulations, and could therefore constitute an illegal futures or commodity option contract.[96]

In response to commenters' concerns, and in light of the protections afforded through other provisions of the alternative regulatory framework, the final rules do not restrict the persons that may act as counterparties in OTC derivatives transactions with an OTC derivatives dealer. Instead, the final rules contain certain safeguards designed to protect an OTC derivatives dealer's counterparties, as well as to prevent trading in standardized and fungible OTC derivative instruments that are securities.

In particular, Rule 15a–1 requires, subject to limited exceptions, an OTC derivatives dealer to effect any securities transaction through its fully regulated broker-dealer affiliate, subject to all applicable sales practice requirements.[97] In addition, Rule 3b–13 excepts from the definition of eligible OTC derivative instrument those securities contracts that are one of a class of fungible instruments that are standardized as to their material economic terms.[98] The elimination of counterparty restrictions also addresses concerns that confusion about the applicability of the CEA could arise as a result of any differences between the terms ''permissible derivatives counterparty'' and ''eligible swap participant.'' As noted above, this rulemaking does not affect the applicability of the CEA to any particular transaction.

4. Proposed Rule 3b–16; Definition of Hybrid Security

As proposed, Rule 3b–16 would have defined hybrid security to mean a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest rates, commodities, securities, or indices (or any combination, permutation, or derivative of such contract or underlying interest). The definition of hybrid security did not raise many comments.

The CFTC, however, expressed concerns that, in proposing a definition of hybrid security, no consideration was given to the scope of the exemption for hybrid instruments contained in the CFTC's Part 34 regulations.[99] The CFTC

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[85] *See* Rule 30–3(a)(65) (17 CFR 200.30–3(a)(65). *See also* Section II.C.2. below, discussing the ability of the Commission to issue orders under rule 15a–1(b) (17 CFR 240.15a–1(b) regarding the securities activities of OTC derivatives dealers.

[86] The Commission will consider the economic realities of a securities transaction, and not the label assigned to the transaction, for purposes of determining whether a particular transaction is permitted under the alternative regulatory framework. *See, e.g., In the Matter of BT Securities Corporation,* Exchange Act Release No. 35136 (Dec. 22, 1994). For example, an OTC derivatives dealer may not engage in a forward transaction that would otherwise not be permitted under the framework in the guise of options or other permitted transactions.

[87] *See* Rule 15a–1(b)(3) (17 CFR 240.15a–1(b)(3). Unlike other provisions contained in these rules that permit the expansion of OTC derivatives dealers' activities, this authority has not been delegated to the staff.

[88] 15 U.S.C. 78c(a)(10).

[89] Questions on this subject should be addressed to the Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549, (202) 942–0073

[90] Proposing Release, Section II.A.3., 62 FR at 67942.

[91] *Id.*

[92] *See* letters cited in Section IV.C. of the Comment Summary.

[93] SIA Letter I, p. 10.

[94] *See, e.g.,* NYSE Letter, p. 3; EUDA Letter, p. 2.

[95] DESCO Letter, pp. 7–8.

[96] CFTC Letter, p. 12.

[97] Rule 15a–1(c) (17 CFR 240.15a–1(c)).

[98] Rule 3b–13(b)(2)(ii) (17 CFR 240.3b–13(b)(2)(ii)).

[99] CFTC Letter, p. 13. Hybrid instruments are depository instruments or securities instruments, such as debt or equity securities, that have one or more commodity-dependent components with payment features similar to commodity futures or

noted that some of the instruments that would qualify as ''acceptable'' hybrid securities were actually futures or commodity option contracts that were not exempted under the CFTC's Part 34 regulations and could thus be illegal under the CEA.[100]

The term hybrid security, however, is limited to *securities* that incorporate the enumerated payment features. In addition, the alternative regulatory framework employs the term only in the context of an OTC derivatives dealer's ability to issue and reacquire its issued securities (including hybrid securities) under Rules 3b–12 and 15a–1. Moreover, as stated previously, an OTC derivatives dealer remains subject to all other applicable statutes, rules, and regulations. To the extent that the offer and sale of hybrid securities by an OTC derivatives dealer are covered by the CEA, the transactions would need to be structured to qualify for available exemptions. Nevertheless, because of the limited use of the term under the alternative regulatory framework, the Commission is not adopting a separate rule defining ''hybrid security,'' but rather is including a definition of the term only for purposes of Rules 3b–12 and 15a–1.

Certain revisions have been made to the definition of ''hybrid security'' to achieve conformity with the revisions to the final definition of eligible OTC derivative instrument as set forth in Rule 3b–13.[101] Accordingly, for purposes of Rules 3b–12 and 15a–1, a ''hybrid security'' is defined to mean a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).[102]

commodity option contracts. Under the CFTC's part 34 regulations, such instruments may be exempt from regulation under the CEA if the sum of the commodity-dependent values of the commodity-dependent components of the instrument is less than the commodity-dependent value of the commodity-independent component. 17 CFR part 34.

[100] CFTC Letter, p. 13.

[101] *See* discussion at Section II.A.2. above *See also* SIA Letter II, p. 3, n.2.

[102] *See* Rules 3b–12(d) (17 CFR 240.3b–12(d)) and 15a–1(e) (17 CFR 240.15a–1(e)).

5. Rules 3b–14 and 3b–15; Definitions of Cash Management Securities Activities and Ancillary Portfolio Management Securities Activities

Proposed Rule 3b–15 would have permitted an OTC derivatives dealer to engage in a limited range of securities activities, described under the rule as ''permissible risk management, arbitrage, and trading transactions,'' in connection with the dealer's business as a counterparty in eligible OTC derivative instruments and as an issuer of securities. As discussed above, the focus of the alternate regulatory system for OTC derivatives dealers is to permit U.S. securities firms to establish a separately capitalized booking vehicle for an OTC derivatives business. However, in order to operate a competitive business, an OTC derivatives dealer must also be able to engage in limited securities trading activities in connection with its OTC derivatives dealing business. This includes the ability to take possession of and sell counterparty collateral, to invest short-term cash balances, to engage in certain financing transactions, and to manage risks associated with its OTC derivatives positions or its issuance of securities.

These related securities activities, however, must be subject to appropriate limitations to prevent an OTC derivatives dealer from engaging in dealing activity in cash market instruments. An OTC derivatives dealer should not be provided with an unfair regulatory advantage over a fully regulated broker-dealer due to the availability of modified capital and margin requirements. In addition, an entity that engages in comprehensive securities dealing activity should be subject to full broker-dealer regulation, including existing capital and margin requirements, and be subject to supervision by an SRO.

Moreover, appropriate limitations on the related securities activities of an OTC derivatives dealer must be in place to prevent the dealer from engaging in substantial proprietary securities trading activities. The alternative regulatory framework is not intended to allow an OTC derivatives dealer to operate in a manner similar to an active securities trader, such as a hedge fund. Accordingly, under the final rules, an OTC derivatives dealer may not engage in any transaction in any security that is not an eligible OTC derivative instrument, with the exception of activities permitted under final Rules 3b–14 and 3b–15, as discussed below.[103]

Under the regulatory framework, as proposed, the definition of ''permissible risk management, arbitrage, and trading transactions'' attempted to carefully define activities associated with managing the risk of an OTC derivatives dealer's business, while excluding other securities dealing and proprietary trading activities. Based on the comments received on the scope of ''permissible risk management, arbitrage, and trading transactions,'' however, the final rules have been restructured to more accurately reflect the types of cash management and portfolio management activities engaged in by dealers in OTC derivative instruments. Therefore, as noted above, the Commission is not adopting a definition of ''permissible risk management, arbitrage, and trading transactions,'' but rather is defining two new terms: ''cash management securities activities'' and ''ancillary portfolio management securities activities.'' [104]

a. *Rule 3b–14; Cash Management Securities Activities.* An OTC derivatives dealer may engage in ''cash management securities activities,'' as defined in Rule 3b–14. Under the rule, an OTC derivatives dealer may engage in cash management securities activities in connection with its securities activities as permitted under Rule 15a–1 (discussed in Section II.C.1. below) or its non-securities activities that involve eligible OTC derivative instruments or other financial instruments. Cash management securities activities are limited to (1) any taking possession of, and any subsequent sale or disposition of, collateral provided by a counterparty, or any acquisition of, and any subsequent sale or disposition of, collateral to be provided to a counterparty; (2) cash management; and (3) financing of certain positions of the dealer. Each of these three categories of cash management securities activities is discussed in more detail below.

i. Counterparty Collateral. Proposed Rule 3b–15(a) would have allowed an OTC derivatives dealer to take possession of and sell counterparty collateral, in connection with the dealer's business as a counterparty in eligible OTC derivative instruments and as an issuer of securities. The SIA

[103] *See* Rules 3b–12(c) (17 CFR 240.3b–12(c)) and 15a–1(a)(3) (17 CFR 240.15a–1(a)(3)).

[104] With certain exceptions (*see* Section II.C.3. below), all cash management securities activities and ancillary portfolio management securities activities must be effected through an OTC derivatives dealer's fully regulated broker-dealer affiliate. *See* Rule 15a–1(c) (17 CFR 240.15a–1(c)).

argued that this provision unduly restricted the scope of activities, and requested that the rule be modified to allow an OTC derivatives dealer to engage in (1) any disposition of collateral provided by a counterparty; and (2) the acquisition of, and any subsequent sale or disposition of, collateral to be provided to a counterparty.[105]

To allow an OTC derivatives dealer to take appropriate action with respect to counterparty collateral, an OTC derivatives dealer's activities should not be limited to taking possession of and selling collateral, but should also extend to other dispositions of the collateral. Therefore, Rule 3b–14(a), as adopted, has been revised to expand the permissible activities of an OTC derivatives dealer with respect to counterparty collateral.

Rule 3b–14(a), like proposed Rule 3b–15(a), does not limit any use of the counterparty collateral consistent with the agreements entered into between dealers and their counterparties. As the End-Users of Derivatives Association, Inc. (''EUDA'') noted, many end-users deny counterparties free use of posted collateral because it may expose the pledging party to significant additional credit risk.[106] In this regard, Rule 3b–14 is not intended to have any effect on individually negotiated collateral support agreements or any rehypothecation rights contained in these agreements.

ii. Cash Management. Rule 3b–14(b), as adopted, permits an OTC derivatives dealer to engage in cash management activities in connection with the dealer's securities activities (as permitted under Rule 15a–1) or its non-securities activities that involve eligible OTC derivative instruments or other financial instruments.[107] Rule 3b–14(b) applies only to managing cash of the OTC derivatives dealer, and not of its affiliates. Thus, any securities trading activities associated with cash management by an OTC derivatives dealer must be at a level commensurate with the OTC derivatives dealer's bona fide operational needs, taking into consideration the Commission's capital requirements for the OTC derivatives dealer and the amount of capital needed to satisfy the credit requirements of counterparties.

Cash management securities activities must also be limited to trading in instruments that are sufficiently liquid and otherwise recognized as appropriate cash management instruments. In addition, these activities may not involve moving government securities repurchase agreement or other trading books from a fully regulated broker-dealer into its OTC derivatives dealer affiliate.

iii. Financing. Under proposed Rule 3b–15(d), an OTC derivatives dealer generally would have been permitted to engage in financing transactions in connection with its business as a counterparty in eligible OTC derivative instruments and as an issuer of securities. The proposed rule would also have required that these financing activities be limited to transactions involving securities positions established through the taking possession of or sale of counterparty collateral, cash management, or hedging activity. The SIA regarded these limitations as unduly restrictive, and believed that an OTC derivatives dealer should be permitted to finance any aspect of its permitted activities, subject to compliance with Section 7(c) or (d) of the Exchange Act, as applicable.[108]

In response to these concerns, Rule 3b–14(c) provides that an OTC derivatives dealer may finance through securities transactions any position of the dealer acquired in connection with its permissible securities activities or its non-securities activities that involve eligible OTC derivative instruments or other financial instruments. Proposed Rule 3b–15 would have permitted financing of certain securities positions by means of repurchase and reverse repurchase agreements, buy/sell transactions,[109] and lending and borrowing transactions. The final rule eliminates the list of restrictions on the types of transactions in which an OTC derivatives dealer may engage to finance its positions. However, a broker-dealer may not run such things as a repurchase agreement, stock lending, or buy/sell book out of an affiliated OTC derivatives dealer in order, for example, to have access to financing for the OTC derivatives dealer's business.

b. *Rule 3b–15; Ancillary Portfolio Management Securities Activities.* In addition to cash management securities activities, an OTC derivatives dealer may engage in ''ancillary portfolio management securities activities,'' as defined in Rule 3b–15. Under the rule, these securities activities must be limited to transactions in connection with the OTC derivatives dealer's dealer activities in eligible OTC derivative instruments, the issuance of securities by the dealer, or such other securities activities that the Commission may designate by order. They must also (1) be conducted for the purpose of reducing the market or credit risk of the dealer or consist of incidental trading activities for portfolio management purposes; and (2) be limited to risk exposures within the market, credit, leverage, and liquidity risk parameters set forth in both the trading authorizations granted to the associated person (or to the associated person's supervisor) who executes the transaction for, or on behalf of, the dealer, and the written guidelines approved by the dealer's governing body and included in the dealer's internal risk management control system.[110] Rule 3b–15 also requires that ancillary portfolio management securities activities be conducted only by associated persons of the dealer who perform substantial duties for or on behalf of the dealer in connection with its dealer activities in eligible OTC derivative instruments.

The limitations on an OTC derivatives dealer's portfolio management activities under Rule 3b–15 are aimed at preventing the fully regulated broker-dealer from moving its securities book into its OTC derivatives dealer affiliate, establishing a proprietary trading desk in the OTC derivatives dealer, or authorizing personnel or trading units specifically to engage in proprietary trading activities.[111] These activities are not within the scope of an OTC derivatives dealer's primary role as a booking vehicle for OTC derivatives transactions, and a firm engaging in

[105] SIA Letter I, p. 8.

[106] EUDA Letter, p. 3.

[107] As proposed, Rule 3b–15(b) would have permitted an OTC derivatives dealer to engage in transactions involving cash management, in connection with the dealer's business as a counterparty in eligible OTC instruments and as an issuer of securities. Proposing Release, Section II.A4., 62 FR at 67943. No commenters specifically addressed permitted cash management practices.

[108] SIA Letter I, p. 8.

[109] A buy/sell transaction is in many respects the economic equivalent of a repurchase transaction. The principal respect in which it differs is that title to the instrument that is the subject of the transaction passes to another party. *See* Proposing Release, Section II.A.4., n.22, 62 FR at 67943, n.22.

[110] As discussed in Section II.H.3. below, Rule 15c3–4 (17 CFR 240.15c3–4) requires an OTC derivatives dealer to establish, document, and maintain a system of internal controls for monitoring and managing risk associated with its business activities.

[111] *See also* Section II.A.1. above, discussing the limitations on securities activities imposed under Rule 3b–12. In short, the scope of permissible portfolio management securities activities is further limited by the requirement under Rule 3b–12 that the securities activities of an OTC derivatives dealer consist primarily of engaging in dealer activities in eligible OTC derivative instruments that are securities, issuing and requiring securities that are issued by the dealer, and cash management securities activities. *See* Rule 3b–12(b) (17 CFR 240.3b–12(b)).

these activities would be in violation of the rules.[112]

Rule 3b–15, however, does permit an OTC derivatives dealer to engage in incidental securities trading activities for portfolio management purposes. In permitting this, the rule recognizes that an OTC derivatives dealer may to a limited extent engage in a securities trading activity for portfolio management purposes that may not necessarily be for the specific purpose of reducing the dealer's market or credit risk.[113] This provision of the rule, however, is not intended to permit an OTC derivatives dealer to engage in substantial securities trading that is not for the purpose of reducing the dealer's market or credit risk arising out of its dealer activities in eligible OTC derivative instruments (or its issuance of securities).

As discussed more fully below, the Commission has responded to commenters by easing the restrictions on the non-dealing securities activities of OTC derivatives dealers and by broadly defining ancillary portfolio management securities activities. The final rules are intended to be flexible and to accommodate current business practices of OTC derivatives dealers. Because, as drafted, the rule defines a broad scope of permissible activities, the restrictions on proprietary trading and dealing in cash markets may prove inadequate. Thus, Rule 15a–1(b)(4) preserves the Commission's ability to clarify, by order, whether certain securities activities of an OTC derivatives dealer are within the scope of ancillary portfolio management securities activities.[114]

Because the commenters generally focused on the categories of activities identified in the definition of ''permissible risk management, arbitrage, and trading transactions'' under proposed Rule 3b–15, each of these categories is discussed separately below.

i. Hedging. Under proposed Rule 3b–15(c), an OTC derivatives dealer would have been permitted to ''hedge an element of market or credit risk associated with one or more existing or anticipated transactions in eligible OTC derivative instruments or the issuance of securities, including warrants on securities, hybrid securities, or structured notes.'' This is the only section of the proposed rules that specifically addressed the risk management practices of an OTC derivatives dealer. For that reason, some commenters believed that the Commission should more clearly define what activities would be considered ''hedging activity.'' [115] They essentially did not want an OTC derivatives dealer to be limited to hedging only those risks arising in connection with the dealer's business as a counterparty in eligible OTC derivative instruments and as an issuer of securities, but rather wanted the firm to be able to manage risks on a portfolio-wide basis through hedging or other risk management techniques.

For instance, the SIA regarded the limitation on the ''hedging'' activities listed in the proposed rule as unduly restrictive, and believed that an OTC derivatives dealer should be permitted to ''engage in any risk management transaction that is designed to implement management's decision as to the market risk profile the firm wishes to obtain.'' [116] In this regard, the SIA commented that dealers do more than just hedge their positions, and that many dealers take on levels of risk consistent with certain risk parameters. The SIA also claimed that an OTC derivatives dealer should be permitted to manage the risks associated with cash management, financing, and other permissible securities positions, in addition to the risks arising from permissible derivative and hybrid positions.[117] D.E. Shaw & Co., in turn, stated that an OTC derivatives dealer should also be able to engage in risk management activities that involve the hedging of ''liquidity, legal, or operational risks, or any other risks for which derivative hedging products are developed.'' [118]

As discussed earlier, in response to comments received regarding the manner in which dealers in OTC derivative instruments conduct their business activities, the Commission has restructured the final rules to better reflect current firm practices. As a result, Rule 3b–15, as adopted, incorporates the concept of managing risk on a portfolio-wide basis, and omits any reference to the term ''hedging.'' Thus, the rule does not expressly limit the range of permissible portfolio management securities activities. Instead, these activities are limited by the requirement that they not give rise to risk exposures that, on an aggregate portfolio basis, exceed the risk limits adopted for the dealer's business under Rule 15c3–4,[119] as well as other requirements that serve to ensure that the OTC derivatives dealer does not engage in dealer activities in cash market securities or substantial proprietary trading activities.

ii. Arbitrage. Under proposed Rule 3b–15(e), an OTC derivatives dealer would have been permitted to engage in a transaction involving arbitrage, provided that any arbitrage involving securities was limited to arbitrage of a securities position that was acquired in connection with the taking possession of or selling of counterparty collateral, cash management, or hedging activity.[120] The SIA requested that

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[112] *See* Rule 15a–1 (17 CFR 240.15a–1), and discussion in Section II.C. below.

[113] For example, a firm that has a long position in equity volatility as a result of OTC derivatives transactions with counterparties is not required to engage in ancillary portfolio management securities activities that reduce that volatility exposure. Instead, for example, a firm that believes that equity volatility exposure. Instead, for example, a firm that believes that equity volatility is underpriced in the market could enter into exchange-listed derivatives transactions to create or increase existing long volatility exposure. Similarly, a firm whose OTC derivatives portfolio included risk exposure to a particular asset category or credit could enter into non-OTC derivatives transactions in securities that would effectively convert that exposure to a different asset category or credit.

[114] *See* Rule 15a–1(b)(4) (17 CFR 240.15a–1(b)(4)). The Commission is not delegating this authority to its staff.

[115] *See, e.g.*, Comment Letter from the Association of the Bar of the City of New York, Committee on Futures Regulation (''ABCNY Committee Letter''), p. 3; *see also* letters cited in Section IV.F.1.b. of the Comment Summary.

[116] SIA Letter I, p. 8.

[117] *Id. See also* Merrill Lynch Letter, p. 5. In a later comment letter, the SIA also stated that, so long as an OTC derivatives dealer's securities activities consisted primarily of conducting an OTC derivatives dealing business, an OTC derivatives dealer should be permitted to engage in cash market securities trading activities for portfolio management purposes, provided that these activities did not give rise to portfolio risk exposures that, on an aggregate basis, exceeded the risk management parameters for the dealer's business pursuant to proposed Rule 15c3–4. SIA Letter II, p. 1. It maintained that this approach would permit the dealers to engage in portfolio management activities consistent with the manner in which such firms currently manage their OTC derivatives businesses, but would still preclude firms from establishing OTC derivatives dealers to conduct a proprietary trading business in cash market securities. *Id.* While Rule 3b–15, as adopted, has been revised in response to the SIA's comments, the rule includes additional limitations as a means of permitting reasonable portfolio management securities activities, while also prohibiting overly broad securities trading activities.

[118] DESCO Letter, p. 7.

[119] In addition to the risk parameters set forth in the written guidelines included in the dealer's internal risk management control system under Rule 15c3–4 (17 CFR 240.15c3–4), the appropriate levels of risk assumed by an OTC derivatives dealer are also to be determined by the dealer through trading authorizations or limits placed on the associated person executing a transaction on the dealer's behalf. *See* Rule 3b–15(a)(3)(i) (17 CFR 240.3b–15(a)(3)(i)).

[120] The Proposing Release further stated that permissible arbitrage transactions would be limited to transactions involving closely related cash market and derivative instruments that were effected close to one another in time for purposes of taking advantage of price disparities in different markets. An example would include transactions involving the purchase or sale of an equity security and the acquisition of an option on the same equity

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permissible arbitrage activities be expanded to include (1) arbitrage of eligible OTC derivatives instruments; (2) arbitrage of short securities positions; and (3) arbitrage of prospective securities purchases or sales under permitted forward arrangements.[121]

The final rules do not use the term ''arbitrage'' in describing the scope of risk management activities in which an OTC derivatives dealer may engage. Instead, the rules are intended to permit any portfolio management transaction, including arbitrage transactions, that meet the conditions in the rules. As a practical matter, however, a firm engaging in an OTC derivatives business typically does not engage in ''arbitrage'' transactions that would not otherwise qualify as an ancillary portfolio management securities activity. Rule 3b–15 allows a firm to manage its positions and make a profit, provided that the activities occur in connection with its derivatives dealing business (or the issuance of securities) and meet the other conditions set forth in the rule.

iii. Trading. To avoid inadvertent violations of the proposed rules through an inability to properly document the purpose of a transaction, proposed Rule 3b–15(f) would have allowed the OTC derivatives dealer to engage in a limited number of certain additional trading transactions. In particular, an OTC derivatives dealer generally would have been permitted to engage in no more than 150 additional securities transactions per year relating to a securities position acquired in connection with the taking possession of or selling of counterparty collateral, cash management, or hedging activity. Proposed Rule 3b–15(f) would have further required an OTC derivatives dealer engaging in any such trading transaction to maintain and enforce written policies and procedures reasonably designed to achieve compliance with the other provisions of proposed Rule 3b–15.

Commenters generally criticized proposed Rule 3b–15(f).[122] This provision was essentially crafted to create a limited ''safe harbor'' to protect dealers from committing inadvertent violations of the proposed rules because of their inability to properly document the purpose of a transaction. The majority of commenters, however, had difficulty understanding or applying the provision. For example, the SIA expressed concern that the limitation on trading activities might inadvertently exclude the purchase or disposition of securities delivered or received, or to be delivered or received, by the OTC derivatives dealer pursuant to the terms of an eligible OTC derivative instrument.[123] It also recommended that the proposed 150 transaction basket be clarified to indicate that the basket was not intended to place a limit on the number of securities transactions that could be entered into by an OTC derivatives dealer if such transactions could be demonstrated to relate to permitted activities.

Several commenters thought the 150 transaction limit was too low. For example, the SIA believed that the proposed basket was potentially too small and would not adequately reflect the character and scope of a particular firm's activities.[124] As an alternative, several commenters recommended that the size of any such basket be related to the scope of the OTC derivatives dealer's activities rather than a specified number of transactions.[125] The Committee on Futures Regulation of the Association of the Bar of the City of New York suggested that, instead of an arbitrary number of ''allowable'' transactions per year, the Commission, through its examination process, make determinations of whether a securities transaction was entered into with a good faith belief that it satisfied one of the purposes set forth in the rule.[126]

In response to these comments, the Commission has not included a safe harbor provision in either Rule 3b–14 or Rule 3b–15 allowing for inadvertent violations of the rules. Rather, under the final rules, an OTC derivatives dealer may engage in cash management securities activities and ancillary portfolio management securities activities, as those terms are defined in Rules 3b–14 and 3b–15.

iv. Documentation of Activities. Proposed Rule 3b–15(f), which contained the 150 transaction ''safe harbor,'' also generated concern regarding whether an OTC derivatives dealer would be required to document the purpose of each individual transaction. Commenters argued that, to the extent the rules required individual transaction documentation, they were inconsistent with portfolio management practices. Instead, commenters suggested that dealers be allowed to demonstrate on a portfolio-wide basis that their cash market transactions were consistent with the restrictions set forth in the rules.[127]

As discussed in the Proposing Release, the nature of risk management activities makes it difficult to determine whether a particular transaction satisfies the requirements set forth in the rules.[128] The requirement that an OTC derivatives dealer develop reasonable procedures for ensuring compliance with the restrictions in the rules was intended, in fact, to accommodate current portfolio risk management practices. The rules do not require that documentation of the intended purposes of individual securities trades be maintained by the OTC derivatives dealer. Rather, an OTC derivatives dealer must develop reasonable procedures for ensuring compliance with the restrictions set forth in the rules and for demonstrating the relationship between its risk management activities and the positions it maintains on a portfolio-wide basis.[129]

B. Amendment to Rule 15b1–1; Registration With the Commission

Under the proposed amendments to Rule 15b1–1,[130] a firm seeking to register as an OTC derivatives dealer would have been required to register with the Commission by filing Form BD, the Uniform Application for Broker-Dealer Registration.[131] No comments were received regarding these proposed amendments. Accordingly, the amendments to Rule 15b1–1 are being adopted as proposed.

A firm that elects to register as an OTC derivatives dealer must file an application for registration on Form BD, in accordance with the instructions on the form. The form must be filed with the Central Registration Depository, a computer system operated by the NASD. In completing Item 10 of the form, which asks an applicant to disclose its planned business activities, an OTC derivatives dealer must respond by checking ''other'' and writing in that it proposes to engage in the business of an OTC derivatives dealer.[132] Some OTC

security that were effected close together in time, taking into consideration market liquidity and hours of market operations. Proposing Release, Section II.A.4., n.23, 62 FR at 67943, n.23.

[121] SIA Letter I, p. 8. *See also* Section IV.F.1.d. of the Comment Summary.

[122] *See* Section IV.F.1.e. of the Comment Summary.

[123] SIA Letter I, pp. 8–9.

[124] *Id.*

[125] *E.g.*, SIA Letter I, p. 9; Merrill Lynch Letter, p. 6.

[126] ABCNY Committee Letter, p. 3.

[127] *See* Section IV.F.2. of the Comment Summary.

[128] Proposing Release, Section II.A.4., 62 FR at 67943.

[129] *See* Section II.H.3. below, discussing Rule 15c3–4 (17 CFR 240.15c3–4), which addresses internal risk management control systems for OTC derivatives dealers.

[130] 17 CFR 240.15b1–1.

[131] 17 CFR 249.501.

[132] *See also* Section II.F.3.b.i. below, discussing the requirement that an OTC derivatives dealer send an application to the Commission with respect to the dealer's use of VAR models to calculate net capital.

derivatives dealers may also be required to comply with Exchange Act provisions applicable to government securities activities.[133] For instance, if an OTC derivatives dealer were to write an option on a government security, it would be considered to be a government securities dealer. Pursuant to Section 15C(a)(1)(B)(i),[134] a broker or dealer effecting, inducing, or attempting to induce the purchase or sale of a government security must file with the appropriate regulatory agency written notice that it is a government securities broker or dealer.[135] As a result, an OTC derivatives dealer that engages in government securities transactions must also file notice of such activities with the Commission, by checking ''yes'' in response to Item 13A on Form BD.

C. Rule 15a–1; Securities Activities of OTC Derivatives Dealers

1. Scope of Permissible Securities Activities

Proposed Rule 15a–1 would have permitted an OTC derivatives dealer to (1) engage as a counterparty in transactions in eligible OTC derivative instruments with permissible derivatives counterparties; (2) issue and reacquire issued securities, including warrants on securities, hybrid securities, and structured notes; and (3) engage in other securities transactions that the Commission designated by order. In connection with these activities, an OTC derivatives dealer would also have been permitted to engage in permissible risk management, arbitrage, and trading transactions, as defined in proposed Rule 3b–15.

Because Rule 15a–1 describes the securities activities in which an OTC derivatives dealer may engage, it parallels the requirements contained in Rule 3b–12, which defines the term ''OTC derivatives dealer.'' Thus, the comments addressing proposed Rule 15a–1 were generally consistent with those concerning proposed Rule 3b–12.[136] The SIA urged that the rule be simplified by (1) making the proposed regulatory category available to ''dealers who are not engaged in the business of buying and selling securities other than securities that are eligible OTC derivative instruments''; and (2) deleting the proposed restrictions on non-dealing activities in securities contained in proposed Rule 15a–1.[137]

As discussed earlier, however, the new regime is not intended to permit an OTC derivatives dealer to engage in substantial proprietary securities trading activities. Rather, the purpose of the alternative regulatory framework is to allow U.S. securities firms to elect to establish a separately capitalized vehicle in which to book a client-oriented OTC derivatives business. As a result, the restrictions on these activities in Rule 15a–1 are necessary.

For the reasons discussed above and in Section II.A.1. with respect to the definition of OTC derivatives dealer, the Commission has revised Rule 15a–1 to provide that the securities activities of OTC derivatives dealer must be limited to (1) engaging in dealer activities in eligible OTC derivative instruments that are securities; (2) issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;[138] (3) engaging in cash management securities activities; (4) engaging in ancillary portfolio management securities activities; and (5) engaging in such other securities activities that the Commission designates by order. In addition, an OTC derivatives dealer's securities activities must consist primarily of engaging in dealer activities in eligible OTC derivative instruments that are securities, issuing and reacquiring its issued securities, and engaging in cash management securities activities.[139]

The alternative regulatory framework for OTC derivatives dealers, as adopted, also includes a provision requiring that the dealer develop procedures to help ensure that it does not engage in securities activities beyond those permitted under Rule 15a–1. As discussed further in Section II.H.3. below, new Rule 15c3–4 requires an OTC derivatives dealer to establish, document, and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities. As part of its obligations under Rule 15c3–4, an OTC derivatives dealer's written guidelines must include and discuss the dealer's procedures to prevent it from engaging in securities transactions that are not permitted under Rule 15a–1. In addition, Rule 15c3–4 requires the OTC derivatives dealer's management to periodically review the dealer's business activities for consistency with risk management guidelines, including whether procedures are in place to prevent the dealer from engaging in any impermissible securities transaction.

2. Commission Orders Regarding OTC Derivatives Dealers' Activities

Under Rule 15a–1(b), the Commission by order, entered upon its own initiative or after considering an application for exemptive relief, may clarify or expand the scope of permissible securities activities in which an OTC derivatives dealer may engage or the scope of eligible OTC derivative instruments. As discussed in earlier sections of this release, such orders may (1) identify other permissible securities activities in which an OTC derivatives dealer may engage; (2) determine that a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument; (3) clarify whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument; or (4) clarify whether certain securities activities are within the scope of ancillary portfolio management securities activities.

Applications for exemptive orders under Section 15a–1(b) should be filed

[133] In this regard, the SIA noted in its comment letter that an OTC derivatives dealer registered with the Commission that engages in transactions in eligible OTC derivative instruments that government securities would exempt from registration as a government securities dealer under Exchange Act Section 15C (15 U.S.C. 78o–5), subject to the notice requirement under Exchange Act section 15c(a)(1)(B) (15 U.S.C. 78o–5(a)(1)(B). SIA Letter I, p. 13.

[134] 15 U.S.C. 78o–5(a)(1)(B)(i).

[135] It must similarly file a written notice when it ceases to act as a government securities broker or dealer. 15 U.S.C. 78o–5(a)(1)(B)(i). *See also* Section 3(a)(44) of the Exchange Act (15 U.S.C. 78c(a)(44)) (defining government securities dealer).

[136] *See* Section II.A.1. above. For example, several commenters believed that the scope of permissible securities transactions under proposed Rule 15a–1 should be expanded, and that the proposed rule would unduly restrict the activities of an OTC derivatives dealer. *See, generally,* letters cited in Sections IV.A. and IV.E. of the Comment Summary.

[137] SIA Letter I, pp. 6–7.

[138] D.E. Shaw & Co. requested clarification regarding the ability of an OTC derivatives dealer to issue and reacquire its issued securities through a fully regulated broker-dealer. It asked whether the phrase meant that the fully regulated broker-dealer must be the issuer of the security or whether the fully regulated broker-dealer must act as principal or agent in the purchase of securities from, or the sale of securities to, the customer. D.E. Shaw & Co. also asked whether the OTC derivatives dealer could be the issuer of the security, as long as the OTC derivatives dealer complied with the registration, confirmation, and similar requirements set forth in the proposed rule. DESCO Letter, p. 9. In short, under Rule 15a–1, an OTC derivatives dealer may only issue its own securities, or reacquire its own securities, through a fully regulated broker-dealer; it may not act in a sales capacity or directly reacquire its securities from holders of such securities, except in limited circumstances with respect to certain counterparties. *See* Rule 15a–1(c) (17 CFR 240.15a–1(c)).

[139] As noted in Section II.A.1. above, although the rules limit the securities activities of OTC derivatives dealers, the Commission has retained the authority under Rule 15a–1 to identify other permissible securities activities for these entities. *See* Rule 15a–1(b)(1) (17 CFR 240.15a–1(b)(1)). This authority has been delegated to the Director of the Division of Market Regulation. *See* Rule 30–3(a)(64) (17 CFR 200.30–3(a)(64).

in accordance with Commission procedures set forth in Rule 0–12 under the Exchange Act.[140] The Commission may issue such orders to the extent they are necessary or appropriate in the public interest, and consistent with the protection of investors. In considering such orders, the Commission will consider whether the securities activities are of the type and nature of activities in which an OTC derivatives dealer may engage under Rule 15a–1, including whether such activities are integrated into, or integral to, the OTC derivatives dealing business of OTC derivatives dealers.

3. Intermediation of Securities Transactions

Proposed Rule 15a–1 would have required an OTC derivatives dealer to effect all securities transactions through a fully regulated broker-dealer. Accordingly, under proposed Rule 15a–1, all applicable SRO sales practice requirements would have applied to the securities transactions of an OTC derivatives dealer.

Several commenters argued that a fully regulated broker-dealer should not be required to intermediate every securities transaction.[141] The SIA maintained that the interpositioning of a broker-dealer was not necessary, particularly given the sophisticated character of the permissible derivatives counterparties, the active participation by such counterparties in structuring instruments to fulfill their particular needs, and the consensual negotiation of the terms of individual transactions.[142] The SIA further stated that, at a minimum, an OTC derivatives dealer should not be required to effect securities transactions through a fully regulated broker-dealer (1) where the counterparty to the transaction was a bank, broker-dealer, government securities broker, government securities dealer, or supranational organization; or (2) in connection with risk management, financing, arbitrage, or other trading transactions in which the OTC derivatives dealer was not acting in its capacity as a dealer, but rather as an investor or end-user.[143] The SIA also objected to the intermediation requirement in the context of offshore transactions involving foreign securities.[144]

D.E. Shaw & Co. also questioned whether an OTC derivatives dealer needed to effect a securities transaction through an *affiliated broker-dealer.* It claimed that an OTC derivatives dealer should also be able to effect these transactions through a bank or broker-dealer with which it had a working relationship.[145] Other commenters questioned the proposed rule's distinction between securities transactions and non-securities transactions, and claimed that if sales practice protection was warranted for securities transactions, then counterparties should receive similar protection for non-securities transactions undertaken with an OTC derivatives dealer.[146] The Chicago Board Options Exchange (''CBOE''), in turn, sought clarification as to which specific SRO sales practice rules would apply to a fully regulated broker-dealer effecting securities transactions for an OTC derivatives dealer's counterparties.[147]

Based on the comments received, Rule 15a–1, as adopted, provides certain limited exceptions to the requirement that securities transactions of an OTC derivatives dealer be effected through its fully regulated broker-dealer affiliate.[148] However, the rule has not been revised, as requested by some commenters, to eliminate the intermediation requirement in connection with cash management or ancillary portfolio management securities transactions in which the OTC derivatives dealer is not acting as a dealer, but rather as an investor or end-user.[149] Accordingly, all cash management securities activities and ancillary portfolio management securities activities of an OTC derivatives dealer must be effected by a fully regulated broker-dealer, unless the transaction is subject to one of the limited exceptions discussed below.[150]

The requirement that securities transactions be effected through a fully regulated broker-dealer is designed, in part, to ensure that all securities transactions remain subject to existing sales practice standards.[151] The requirement is also intended to prevent any regulatory disparity from arising between an OTC derivatives dealer, which is subject to modified capital and margin requirements, and a fully regulated broker-dealer in connection with conducting securities transactions. In addition, it is designed to reduce the risk that counterparties will mistakenly view an OTC derivatives dealer as a fully regulated broker-dealer, rather than as a booking vehicle for derivatives transactions.[152]

However, if the counterparty to a securities transaction is acting as principal and is itself either a registered broker or dealer (including another OTC

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[140] 17 CFR 240.0–12.

[141] *See* letters cited in Section IV.E.1. of the Comment Summary.

[142] SIA Letter I, p. 11.

[143] SIA Letter I, p. 11. Similarly, D.E. Shaw & Co. argued that, in order to level the playing field with non-U.S. broker-dealers, an OTC derivatives dealer should be permitted to transact business directly (without a U.S. broker-dealer intermediary) with all parties with whom a non-U.S. broker-dealer could effect business under Rule 15a–6(a)(4) under the Exchange Act (17 CFR 240.15a–6(a)(4)), including a registered broker or dealer or a bank acting in a broker or dealer capacity. Likewise, it believed that where the OTC derivatives dealer itself is the counterparty to a securities derivatives transaction, the OTC derivatives dealer should not be required to effect the securities transaction through a fully regulated broker-dealer in connection with risk management, financing, arbitrage, or other trading transactions. DESCO Letter, p. 4.

[144] SIA Letter II, pp. 3–4. The SIA argued that the proposed broker-dealer intermediation requirement in the context of offshore transactions involving foreign securities could create significant burdens on registrants, without meaningful corresponding benefits. According to the SIA, if offshore transactions involving foreign securities are required to be intermediated by the fully regulated broker-dealer affiliate, firms might be required to register their non-U.S. offices as branch offices of their fully regulated U.S. broker-dealer (with potentially adverse tax, licensing, or other regulatory consequences) or to confront prohibitive logistical obstacles to compliance with the proposed requirement. The SIA was also concerned about the application of this provision to OTC derivatives transactions arranged and effected by employees resident in a foreign office of an OTC derivatives dealer with a counterparty that is also resident in a foreign jurisdiction. In this regard, it noted that local law may require that the transaction be effected through a locally registered entity, so that a transaction would have to be intermediated by two separate entities. For that reason, it suggested an exception to Rule 15a–1 for permissible securities transaction with foreign counterparties that are arranged and effected by non-U.S. resident employees of an OTC derivatives dealer.

[145] DESCO Letter, p. 3. D.E. Shaw & Co. stated that the restriction to use affiliates limited flexibility and placed an unnecessary burden on U.S. firms conducting a domestic derivatives business.

[146] *See, e.g.,* GFOA Letter, pp. 2–3; EUDA Letter, p. 2.

[147] Comment Letter from the Chicago Board Options Exchange (''CBOE Letter''), p. 5. The CBOE asserted that there is currently a disparity between NASD and NYSE options sales practice rules as applied to listed options, and argued that this disparity, as well as any other disparity between sales practice rules' application to qualified counterparties' OTC derivatives transactions and their listed options transactions, should be remedied.

[148] As noted earlier, an OTC derivative dealer may issue and reacquire its issued securities through an unaffiliated fully regulated broker-dealer. *See* Rule 15a–1(c) (17 CFR 240.15a–1(c)).

[149] *See supra* note 143 and accompanying text.

[150] In addition, the Commission has not revised Rule 15a–1 to extend sales practice requirements to non-securities transactions. As a general matter, sales practice requirements arising under the federal securities laws and SRO rules apply only to the securities transactions of broker-dealers.

[151] Unless otherwise expressly provided in the rules and rule amendments, the fully regulated broker-dealer must comply with all applicable sales practice requirements when effecting any securities transaction for, or on behalf of, an OTC derivatives dealer.

[152] For these same reasons, an OTC derivatives dealer may not effect a securities transaction through an unaffiliated broker-dealer, except in limited circumstances, or through a bank.

derivatives dealer), a bank acting in a dealer capacity, a foreign broker or dealer,[153] or an affiliate of the OTC derivatives dealer,[154] the counterparty is less likely to require the protections afforded by sales practice requirements. In addition, these counterparties are not likely to mistakenly believe that an OTC derivatives dealer is a fully regulated broker-dealer engaging in general securities transactions. Therefore, an OTC derivatives dealer is not required to use its fully regulated broker-dealer affiliate to effect securities transactions with these listed entities. This exception, however, applies only when the counterparty is acting as a principal (that is, for its own account), and not as agent for one of its customers.[155]

There is a second limited exception to Rule 15a–1(c), as adopted. If an OTC derivatives dealer engages in a transaction that is an ancillary portfolio management securities activity involving a foreign security,[156] it is not required to effect that transaction through its fully regulated broker-dealer affiliate if a registered broker or dealer, a bank, or a foreign broker or dealer is acting as agent for the OTC derivatives dealer.[157] This exception will permit an OTC derivatives dealer to select one of these professional intermediaries to represent it in foreign markets when purchasing or selling foreign securities for hedging or portfolio management purposes.

4. Communications Regarding Securities Transactions

The requirement that securities transactions be effected through a fully regulated broker-dealer means that the OTC derivatives dealer's counterparties in these transactions will be considered customers of the fully regulated broker-dealer. Therefore, any person that solicits a potential counterparty to engage in a securities transaction with an OTC derivatives dealer, or otherwise has any contact with the counterparty regarding the transaction, generally must be a registered representative of the fully regulated broker-dealer affiliate.[158] As noted in the Proposing Release, these persons may be dual employees of the fully regulated broker-dealer and the OTC derivatives dealer, subject to appropriate supervision by both firms.[159]

The SIA, however, argued that all employees of the OTC derivatives dealer having contact with counterparties to OTC derivatives transactions effected through a fully regulated broker-dealer should not have to be employees of the fully regulated broker-dealer and be licensed as registered representatives of that firm.[160] D.E. Shaw & Co. claimed that the requirement for any person discussing the terms of a securities transaction with a counterparty to be a registered representative of the fully regulated broker-dealer was broader than current NASD requirements. It therefore requested clarification that the proposed rule would not expand the types of activities that would require registration of associated persons.[161]

Under the final rule, whether a registered representative of an OTC derivatives dealer's fully regulated broker-dealer affiliate must be involved in all contacts with a counterparty relating to a securities transaction depends on the nature of the counterparty. Under Rule 15a–1(d), if the counterparty is a registered broker or dealer, a bank acting in a dealer capacity, a foreign broker or dealer, or an affiliate of the OTC derivatives dealer, a registered representative of the fully regulated broker-dealer affiliate does not have to be involved in the contact. Thus, employees of the OTC derivatives dealer may solicit or otherwise contact these enumerated counterparties, even if the employees are not also registered representatives of the fully regulated broker-dealer.[162]

In addition, in some circumstances, registered representatives of the fully regulated broker-dealer affiliate are not required to be involved in contacts with foreign counterparties. Under Rule 15a–1(d), contacts with a foreign counterparty may generally be conducted by an associated person of a foreign broker or dealer who is not resident in the United States, if the foreign broker or dealer is affiliated with the OTC derivatives dealer and is registered by a foreign financial regulatory authority in the jurisdiction in which the counterparty is resident or the associated person is located.[163] Any resulting securities transaction, however, must generally be effected through the OTC derivatives dealer's fully regulated broker-dealer affiliate.

The new regulatory structure for OTC derivatives dealers does not expand on the types of activities that require registration of associated persons under existing SRO rules. For example, to the extent contact with an OTC derivatives dealer's counterparty regarding a securities transaction involves only clerical or ministerial activities that currently may be conducted by an unregistered associated person of a fully regulated broker-dealer, then the employee of the OTC derivatives dealer performing such activities need not be a registered representative.[164] Persons performing clerical and ministerial

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[153] The term ''foreign broker or dealer'' as used in Rule 15a–1 means ''any person not resident in the United States (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by § 240.15a–6 (17 CFR 240.15a–6)) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of 'broker' in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) or 'dealer' in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).'' *See* See 15a–1(g) (17 CFR 240.15a–1(g)). In general, a foreign bank may be able to satisfy the terms of this definition.

[154] For purposes of Rule 15a–1, the term ''affiliate'' means ''any organization (whether incorporated or unincorporated) that directly or indirectly controls, is controlled by, or is under common control with, the OTC derivatives dealer.'' *See* Rule 15a–1(f) (17 CFR 240.15a–1(f)).

[155] With respect to offshore transactions involving foreign securities, Rule 15a–1 has not been revised to the extent suggested by some commenters (*see supra* note 144), in part because of concerns regarding the application of sales practice protections to foreign counterparties and the proper maintenance of books and records regarding those transactions. However, the general requirement that communications regarding securities transactions be conducted by associated persons of the affiliated fully regulated broker-dealer has been revised to reflect the fact that firms operate OTC derivatives businesses on a global basis, *See* Rule 15a–1(d) (17 CFR 240.15a–1(d)) (further discussed in Section II.C.4. below).

[156] For purposes of Rule 15a–1, the term *foreign security* means ''any security (including a depositary share issued by a United States bank, provided that the depositary share is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904)) issued by a person not organized or incorporated under the laws of the United States, provided the transaction that involves such security is not effected on a national securities exchange or on a market operated by a registered national securities association; or a debt security (including a convertible debt security) issued by an issuer organized or incorporated under the laws of the United States that is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904).'' *See* Rule 15a–1(h) [17 CFR 240.15a–1(h)].

[157] *See* Rule 15a–1(c)(2) (17 CFR 240.15a–1(c)(2)). Rule 15c3–4 (17 CFR 240.15c3–4) requires that an OTC derivatives dealer's written guidelines include the dealer's procedures to prevent it from improperly relying on the exceptions to Rule 15a–1(c) and (d) (discussed in Section II.C.4. below).

[158] *See* Rule 15a–1(d) (17 CFR 240.15a–1(d)).

[159] Fully regulated broker-dealers are responsible for supervising only the securities activities of these dual employees. They are not responsible for supervising a dual employee's non-securities OTC derivatives activities conducted on behalf of the OTC derivatives dealer.

[160] SIA Letter I, p. 12.

[161] DESCO Letter, p. 4.

[162] This is consistent with the exception set forth in Rule 15a–1(c)(1) (17 CFR 240.15a–1(c)(1)).

[163] See Rule 15a–1(d) (17 CFR 240.15a–1(d)) and Rule 15a–1(i) (17 CFR 240.15a–1(i)). *See also supra* note 155 and accompanying text. This approach responds to commenters' concerns that it would be inefficient and impractical to require a registered representative of the OTC derivatives dealer's fully regulated broker-dealer affiliate to conduct all contacts with all foreign counterparties concerning permissible securities activities with the OTC derivatives dealer.

[164] *See* Rule 15a–1(d) (17 CFR 240.15a–1(d)).

functions may also be dual employees of the OTC derivatives dealer and the fully regulated broker-dealer affiliate.

5. Confirmation of Securities Transactions

Rule 10b–10 under the Exchange Act [165] requires broker-dealers to send a written confirmation of each securities transaction with a customer at or before completion of the transaction, containing certain material information about the transaction. The Proposing Release stated that in a securities transaction between an OTC derivatives dealer and a counterparty (or customer) effected through a fully regulated broker-dealer, the OTC derivatives dealer and the fully regulated broker-dealer would each be responsible for sending a confirmation to the counterparty under the rule.[166] It further stated that certain customers could choose not to receive two confirmations for each securities transaction, but rather could instruct the OTC derivatives dealer and the fully regulated broker-dealer to send one joint confirmation on behalf of both parties.[167]

The SIA agreed that the counterparty to any securities transaction would be a customer of the fully regulated broker-dealer and that the fully regulated broker-dealer would have an obligation to deliver a confirmation to the counterparty; however, the SIA argued that the counterparty would not be a customer of the OTC derivatives dealer and, accordingly, the OTC derivatives dealer should not be required to deliver a confirmation.[168] D.E. Shaw & Co. also questioned whether there were any benefits in requiring multiple confirmations that would justify the additional costs and paperwork. Instead, it believed that the fully regulated broker-dealer should take responsibility for sending out a joint confirmation accurately disclosing the respective roles of the fully regulated broker-dealer and the OTC derivatives dealer.[169] In addition, the SIA and D.E. Shaw & Co. noted that if each dealer were jointly and severally liable for a joint confirmation, then the requirement to obtain customer consent to the sending of a joint confirmation was unnecessary and burdensome.[170]

In response to the comments, the proposed requirement that the fully regulated broker-dealer and the OTC derivatives dealer each have to send a separate confirmation, unless the customer instructs them to send a single joint confirmation, has been revised. Although generally both the fully regulated broker-dealer and the OTC derivatives dealer will be responsible for sending a confirmation, disclosing their respective roles in the transactions, the two firms may establish procedures through which the fully regulated broker-dealer will send a joint confirmation on behalf of both firms in satisfaction of Rule 10b–10.[171]

6. Position Limits

Several commenters questioned the application of SRO position limits to an OTC derivatives dealer's activities.[172] The SIA, for example, argued that an OTC derivatives dealer should either be subject to a more realistic SRO position limit regime than was currently applicable under NASD rules or be exempted from the application of SRO position limits with respect to OTC securities options booked through a fully regulated broker-dealer affiliate.[173] The CBOE argued that the rules would result in a competitive disparity between OTC and listed index derivatives, because, as stated by the CBOE, an OTC derivatives dealer's transactions in OTC equity options would be exempt from NASD and CBOE position limits, but transactions in listed index and equity options would not be exempt.[174] As a result, it recommended that the Commission eliminate listed options position limits entirely.[175]

The final rules and rule amendments do not change the current application of position limits to securities transactions effected by a broker-dealer on behalf of an OTC derivatives dealer. Therefore, securities OTC derivatives transactions that are effected through fully-regulated broker-dealers, which are members of SROs, will continue to be subject to applicable SRO position limits.[176] However, in order to permit an OTC derivatives dealer to carry out its business using portfolio risk management techniques, the Commission encourages the NASD to revise its rules to recognize as ''hedged'' those OTC option positions of an OTC derivatives dealer that are hedged on a delta neutral basis.[177]

D. Exemptions for OTC Derivatives Dealers

Collectively, the rules and rule amendments adopted in this final rulemaking establish a new class of broker-dealers that will enjoy certain exemptions from full broker-dealer registration and regulation, subject to special requirements and conditions on their operations. Although an OTC derivatives dealer will be exempt from SRO membership, regular broker-dealer margin requirements, and SIPA (as discussed below), an OTC derivatives dealer's securities activities will be limited by Rule 15a–1.[178]

1. Rule 15b9–2; Exemption From SRO Membership

Proposed Rule 15b9–2 would have exempted an OTC derivatives dealer from membership in a SRO,[179] provided that it entered into an agreement with

[165] 17 CFR 240.10b–10.

[166] Proposing Release, Section 11.C., n.28, 62 FR at 67944, n.28.

[167] *Id.*

[168] SIA Letter I, pp. 11–12.

[169] DESCO Letter, p. 5.

[170] SIA Letter I, p. 12; DESCO Letter, p. 5.

[171] A joint confirmation, sent on behalf of both the OTC derivatives dealer and the fully regulated broker-dealer effecting the transaction must disclose all of the information required of either party under the rule, including, but not limited to, the identity of the security, the trade price, and the date and time of the trade, the identity of each party and its capacity in the transaction, the fact that the OTC derivatives dealer is not a member of SIPC, and any transaction-related compensation earned by either the fully regulated broker-dealer or the OTC derivatives dealer in connection with the transaction. Both the OTC derivatives dealer and the fully regulated broker-dealer will be considered fully responsible for the contents of the joint confirmation. The decision by the two firms to send a joint confirmation will not otherwise affect the obligations of either party to the customer under the anti-fraud provisions of the federal securities laws. In addition, in the event that an OTC derivatives dealer engages in a securities transaction that is not required to be effected through a fully regulated broker-dealer under rule 15a–1 (17 CFR 240.15a–1), then the OTC derivatives dealer must comply with the provisions of Rule 10b–10 (17 CFR 240.10b–10), to the extent such provisions apply to the transaction.

[172] *See* Section IV.J.1. of the Comment Summary.

[173] SIA Letter I, p. 16. D.E. Shaw & Co. also sought clarification that the requirement for executing securities OTC derivatives transactions through a fully regulated broker-dealer was not intended to subject OTC derivatives dealers to the options position limits set forth in NASD rules. In is view, these position limits constituted a competitive disadvantage for U.S. securities firms as against banks and foreign dealers. DESCO Letter, pp. 2–3.

[174] CBOE Letter, p. 2.

[175] CBOE Letter, p. 3.

[176] *See* Rule 2860 of the NASD's Conduct Rules.

[177] The Commission's support for recognizing options positions hedged on a delta neutral basis as properly exempted from SRO position limits is equally applicable to all option market participants for options traded over-the-counter or on exchanges. Therefore, the NASD and options exchange SROs are encouraged to submit rule changes that will recognize delta neutral hedges for both listed and OTC options.

[178] *See supra* Section II.C.

[179] In general, registered broker-dealers must become members of an SRO. *See* Section 15(b)(8) of the Exchange Act (15 U.S.C. 78o(b)(8)). This SRO membership requirement ensures that securities transactions meet SRO sales practice requirements, that employees of SRO member firms who sell securities satisfy certain uniform licensing requirements, that SRO members satisfy maintenance margin and financial responsibility requirements, and that member firms adhere to certain principles of trade and business conduct. *See* sections 15(b)(8) and 15A(g)(3) of the Exchange Act (15 U.S.C. 78o(b)(8); 15 U.S.C. 78o–3(g)(3)).

the examining authority designated pursuant to section 17(d) of the Exchange Act[180] for its registered broker-dealer affiliate. Under this agreement, the DEA would have been expected to conduct a review of the activities of the OTC derivatives dealer, report to the Commission any potential violation of the Commission's rules, and evaluate the dealer's procedures and controls designed to prevent violations.[181] The OTC derivatives dealer would also have been subject to direct examination by Commission staff.

The SRO commenters believed that an OTC derivatives dealer should become a *member* of either the DEA of its registered broker-dealer affiliate or another SRO.[182] In supporting this position, these commenters noted such things as (1) the DEA is in the best position to examine the OTC derivatives dealer given its surveillance and examination knowledge of the registered broker-dealer affiliate; (2) SRO rules impose certain supervisory obligations directly on each member; and (3) SRO membership is necessary to ensure an OTC derivatives dealer's cooperation during an examination.[183] In order to avoid conflict between the new regime and SRO rules, however, both the NYSE and the NASDR recognized that an OTC derivatives dealer member should not be subject to all SRO rules (such as margin rules), but should only be subject to rules that applied to the dealer's unique business.[184]

In contrast, securities firms generally opposed any plan that would require OTC derivatives dealers to become members of an SRO.[185] More than one commenter suggested that the oversight function should be performed only by Commission staff, and that it might be appropriate to establish a new SRO designed to oversee the activities of OTC derivatives dealers.[186]

The Commission has determined that it is not necessary to require OTC derivatives dealers to become members of an SRO and be subject to the full range of SRO regulation at this time. Moreover, because the NYSE and the NASD expressed serious concerns with overseeing OTC derivatives dealers on a contractual basis, the Commission staff will examine OTC derivatives dealers to ensure compliance with Commission rules. This approach will provide the Commission staff with valuable experience regarding the activities of dealers in OTC derivative instruments. In addition, the expected small number of initial registrants also supports direct Commission examination of OTC derivatives dealers at this time.

In granting the Commission authority under Section 15(b)(9) to exempt a class of brokers or dealers from the requirement of SRO membership, Congress recognized that certain types of broker-dealers could be regulated effectively by the Commission without the direct oversight of an SRO. Given that certain SRO rules, such as margin rules, are not consistent with the OTC derivatives dealer regulatory scheme and that securities transactions generally will be effected through a broker-dealer that will be a member of an SRO,[187] the Commission believes that SRO membership and the additional regulation it would entail is not currently warranted. Accordingly, the Commission finds that exempting OTC derivatives dealers from the SRO membership requirement is consistent with the public interest and the protection of investors.

2. Rule 36a1–1; Exemption From Certain Margin Requirements

As part of any OTC derivatives transaction, a dealer may require its counterparty to deposit collateral with the dealer to provide some assurance of the counterparty's ability to perform. Both the ability of the dealer to collect collateral to secure payment under an OTC derivative instrument and the amount of collateral the dealer must collect currently depend on the regulatory status of the dealer. Federal regulations that govern the collateral, or margin, that must be collected by dealers in connection with securities transactions have created certain competitive inequalities between registered broker-dealers and other entities, including bank dealers, that conduct an OTC derivatives business. Registered broker-dealers that extend credit for the purpose of purchasing or carrying securities are required to comply with the provisions of Regulation T.[188] The margin requirements for banks are contained in Regulation U.[189]

As noted above, despite the recent amendments to Regulation T,[190] there remain several differences between Regulation T and Regulation U.[191] For example, the two regulations differ with respect to the margin requirements for short OTC options. Compliance with the more restrictive requirements of Regulation T places broker-dealers at a competitive disadvantage with banks and other derivatives dealers by preventing them from offering credit in securities OTC derivatives transactions on terms that are as favorable as those offered by the other dealers.

Under proposed Rule 36a1–1, extensions of credit by an OTC derivatives dealer in permissible securities transactions generally would have been exempt from Section 7 of the Exchange Act (and Regulation T), provided that the OTC derivatives dealer complied with other federal margin requirements applicable to non-broker-dealer lenders (*i.e.*, Regulation U). While the SIA noted its full support for the proposal, it raised certain technical issues that could result from the codification of the proposed provisions.[192] Morgan Stanley Dean Witter also supported the proposed rule, and stated that application of Regulation U would provide sufficient safeguards against excessive leverage and would permit an OTC derivatives dealer to extend credit on a broader range of OTC derivative products.[193] It also stated that the SIA's clarifications were appropriate, and encouraged the Commission to reassess whether additional exemptive relief would be warranted in the future.[194]

In response to the comments received, the Commission has revised Rule 36a1–1 to clarify that transactions involving the extension of credit by an OTC derivatives dealer are exempt from the provisions of section 7(c) of the Exchange Act,[195] provided that the OTC derivatives dealer complies with section

[180] 15 U.S.C. 78q(d).

[181] *See* Proposing Release, Section II.D.2., 62 FR at 67946.

[182] NYSE Letter, p. 2; Comment Letter from NASD Regulation (''NASDR Letter''), pp. 1–2. The NYSE objected to any structure that would cause the DEA to be considered merely an agent of the Commission, in part because it believed that such an approach would have broad procedural ramifications. It also stated that the proposal to have the DEA review the activities of OTC derivatives dealers on a contractual basis, absent membership, would be prohibited by the Exchange's Constitution. NYSE Letter, p. 2. NASDR also opposed the proposal that an OTC derivatives dealer would not be required to be a member of an SRO if it entered into an agreement with the DEA for its broker-dealer affiliate, because it believed it would create a difficult precedent and might impede effective oversight of this new type of entity. NASDR Letter, pp. 1–2.

[183] *See* section IV.H. of the Comment Summary.

[184] NYSE Letter, p. 2; NASDR Letter, p. 3.

[185] SIA Letter I, p. 14; MSDW Letter, pp. 20–21; DESCO Letter, p. 3, n.2.

[186] *See, e.g.,* SIA Letter I, p. 14.

[187] *See* Rule 15a–1(c) (17 CFR 240.15a–1(c)).

[188] 12 CFR 220.1.

[189] 12 CFR 220.1.

[190] *See* Securities Credit Transactions, Borrowing by Brokers and Dealers, Docket Nos. R–0905, R–0923, and R–0944, 63 FR 2806 (Jan. 16, 1998).

[191] *See* Section I.C.4.b. above.

[192] SIA Letter I, pp. 14–15.

[193] MSDW Letter, pp. 19–20.

[194] MSDW Letter, App. A, p. ii.

[195] 15 U.S.C. 78g(c).

7(d) of the Exchange Act.[196] Because Regulation U is promulgated pursuant to section 7(d), an OTC derivatives dealer remains subject to that provision. The final rule continues to provide that the exemption from section 7(c), and Regulation T thereunder, does not apply to extensions of credit made directly by a registered broker-dealer (other than an OTC derivatives dealer) in connection with transactions in eligible OTC derivative instruments for which an OTC derivatives dealer acts as counterparty.[197]

The Commission believes that application of Regulation U in lieu of Regulation T is appropriate for the lending that occurs in the OTC derivatives market, given the nature of the bilateral financial instruments and the relative sophistication of the counterparties. Applying Regulation U to extensions of credit by OTC derivatives dealers will provide sufficient safeguards, while allowing OTC derivatives dealers to extend credit in accordance with their normal business practices.[198]

Because application of Regulation U will promote competition and efficiency in the OTC derivatives market and will result in suitable margin regulation for OTC derivatives dealers and their counterparties, the Commission finds that exempting OTC derivatives dealers from Section 7(c) of the Exchange Act is necessary or appropriate in the public interest and consistent with the protection of investors. This exemption is conditioned on the OTC derivatives dealer's compliance with Section 7(d) of the Exchange Act.[199]

[196] 15 U.S.C. 78g(d).

[197] OTC derivatives dealers that extend credit in securities transactions that are required to be effected through a fully regulated broker-dealer, however, may rely on the exemption form section 7(c) and Regulation T provided under Rule 36a1–1.

[198] While the CBOE supported allowing the OTC derivatives positions of counterparties carried on the books of OTC derivatives dealers to be exempt from Regulation T conditioned on the application of Regulation U, it believed that application of Regulation U would result in competitive disparities between OTC and listed options markets. Accordingly, it requested a similar margin treatment for listed options transactions. CBOE Letter, p.3. The Commission, however, is not extending a similar margin treatment to listed options at this time. The new regulatory framework is intended to allow U.S. securities firms to compete more effectively in global OTC derivatives markets. Any revisions to the regulatory standards for exchange markets would require, among other things, careful consideration of the differences between exchange markets and OTC derivatives markets.

[199] Rule 36a1–1 applies only to extensions of credit *by* an OTC derivatives dealer. Section 7 of the Exchange Act, however, continues to apply to persons extending credit *to* an OTC derivatives dealer. Credit extended to an OTC derivatives dealer, like credit extended to a fully regulated broker-dealer, however, is excepted from section 7 of the Exchange Act if it satisfies the conditions for such exceptions contained in section 7.

[200] 15 U.S.C. 78aaa *et seq.*

[201] Proposing Release, Section II.G., 62 FR at 67949–50. The bankruptcy code contains certain exceptions to its automatic stay provisions that enable a counterparty in a derivatives transaction to exercise its rights to liquidate a position (*i.e.*, it preserves a counterparty's contractual termination, setoff, and collateral foreclosure rights) in the event of the other counterparty's insolvency. *See, e.g.*, 11 U.S.C. 362(b)(6), (7), (17); *id.* at sections 555, 556, 559, and 560. Several of these provisions, however, may be subject to a stay order under SIPA. *See* 11 U.S.C. 555 (contractual right to liquidate a securities contract); *id.* at section 559 (contractual right to liquidate a repurchase agreement).

[202] Under the typical relationship where a counterparty delivers collateral to an OTC derivatives dealer in order to cover its contractual obligations to the dealer, the counterparty and the OTC derivatives dealer have a relationship more analogous to a debtor-creditor relationship than a fiduciary one. Accordingly, these counterparties are not the type of investor intended to be protected under SIPA. *See Securities Investor Protection Corporation v. Executive Services Corp.*, 423 F. Supp. 94 (S.D.N.Y. 1976), *aff'd*, 556 F.2d 98 (2d Cir. 1977).

[203] SIA Letter I, p. 14; DESCO Letter, p. 13; MSDW Letter, p. iv.

[204] MSDW Letter, p. iv.

[205] SIA Letter I, p. 14; DESCO Letter, p. 13.

[206] Section 2 of SIPA states that the provisions of the Exchange Act generally apply as if SIPA ''constituted an amendment to, and was included as a section of'' the Exchange Act. 15 U.S.C. 78bbb.

[207] Proposing Release, Section III, 62 FR at 67952.

[208] SIA Letter II, p. 4.

[209] 15 U.S.C. 78k(a)(1).

[210] The Commission is also authorized to determine, by rule, that additional types of transactions are excepted from the general prohibition of section 11(a)(1). *See* section 11(a)(1)(I) of the Exchange Act (15 U.S.C. 78k(a)(1)(I)). In adopting such a rule, the Commission must find that such transactions are consistent with the purposes of section 11(a), the protection of investors, and the maintenance of fair and orderly markets. *Id.*

[211] 15 U.S.C. 78k(a)(1)(G).

[212] In order to take advantage of this exception, the member must be ''primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities.'' 15 U.S.C. 78k(a)(1)(G)(i).

3. Rule 36a1–2; Exemption From SIPA

Under Rule 36a1–2, OTC derivatives dealers are exempt from the provisions of SIPA,[200] including membership in SIPC. As stated in the Proposing Release, the application of SIPA's liquidation provisions to an OTC derivatives dealer in bankruptcy could undermine certain provisions of the bankruptcy code applicable to the dealer's business.[201] As a result, the potential application of SIPA to OTC derivatives dealers would create legal uncertainty about the rights of counterparties in transactions with registered OTC derivatives dealers in the event of dealer insolvency.[202] This uncertainty could impair the ability of securities firms electing to register as OTC derivatives dealers to compete effectively with banks and foreign dealers, which are not subject to similar legal uncertainty.

The commenters addressing this issue generally believed that the SIPA exemption was both necessary and appropriate.[203] In particular, Morgan Stanley Dean Witter agreed with the statement in the Proposing Release that the exemption was necessary to avoid potential legal uncertainty about the rights of counterparties in transactions with registered OTC derivatives dealers in the event of dealer insolvency.[204] Two other commenters noted that the exemptive relief from SIPA and SIPC membership was critical to the commercial viability of an OTC derivatives dealer.[205]

In response to the comments received, the exemption for OTC derivatives dealers from the provisions of SIPA, including from membership in SIPC, is being adopted in its proposed form. The purposes of SIPA would not be promoted by its application to OTC derivatives dealers, and could in fact result in legal uncertainty for OTC derivatives dealers' counterparties. As a result, the Commission finds that Rule 36a1–2, exempting OTC derivatives dealers from SIPA, is necessary or appropriate in the public interest and consistent with the protection of investors.[206]

E. Rule 11a1–6; Transactions for Certain Accounts of OTC Derivatives Dealers

In response to the Proposing Release's general request for comment on whether additional amendments or exemptions would be needed for OTC derivatives dealers,[207] the SIA requested that the Commission clarify that an exchange member may execute transactions on a national securities exchange for the account of its affiliated OTC derivatives dealer without violating Section 11(a)(1) of the Exchange Act.[208] Section 11(a)(1)[209] makes it unlawful for a member of a national securities exchange to effect transactions on that exchange for certain accounts, including its own account or the account of an associated person of the member.

This general prohibition, however, is subject to numerous exceptions.[210] Among these is a general exception provided in section 11(a)(1)(G)[211] for a member's proprietary transactions where (1) the member is primarily engaged in a public securities business (the ''business mix'' test);[212] and (2) the transactions ''yield,'' in accordance with Commission rules, priority, parity, and

precedence to transactions for accounts of persons who are not members, or associated with members, of the exchange.

Rule 11a1–2 under the Exchange Act[213] generally provides that a member may effect a transaction for the account of an associated person if the member would have been permitted, under section 11(a) and the rules thereunder, to effect the transaction for its own account. The rule, however, specifically limits the circumstances in which a member may use the rule to rely on section 11(a)(1)(G) for transactions for the account of an associated person. In that situation, the associated person must independently meet the ''business mix'' test.[214] Because an OTC derivatives dealer will be a newly created entity, it will not be able to demonstrate that it meets this test. Thus, the exchange member with which it is associated will not be able to rely on section 11(a)(1)(G) for transactions it effects for the account of the OTC derivatives dealer.

In response to this concern, the Commission is adopting Rule 11a1–6. This new rule, which is modeled after Rule 11a1–2, will allow a fully regulated broker-dealer member to effect a transaction on a national securities exchange for the account of an associated person that is an OTC derivatives dealer if the member would have been permitted to effect the transaction for its own account under section 11(a) and the rules thereunder, other than Rule 11a1–2. Rule 11a1–6 permits the fully regulated broker-dealer to rely on the exception provided under section 11(a)(i)(G) for transactions it effects for its OTC derivatives dealer affiliate even if that affiliate does not meet the ''business mix'' test. The fully regulated broker-dealer and the OTC derivatives dealer, however, must comply with all other requirements of section 11(a). Thus, for example, transactions effected by the fully regulated broker-dealer for the account of the OTC derivatives dealer must continue to yield priority, parity, and precedence to transactions for accounts of persons who are not members, or associated with members, of the exchange.

Although Rule 11a1–6 will allow a fully regulated broker-dealer to execute securities transactions on behalf of its OTC derivatives dealer affiliate, public customers will continue to receive priority and precedence in the execution of their securities orders. Moreover, excepting these transactions from the general prohibition of section 11(a)(1) is consistent with Congressional intent in enacting this section. The Commission, therefore, finds that Rule 11a1–6 is consistent with the purposes of section 11(a)(1), the protection of investors, and the maintenance of fair and orderly markets.

F. Net Capital Requirements for OTC Derivatives Dealers

1. Overview of Amendments to Rule 15c3–1

The Commission is amending the net capital rule, Rule 15c3–1 under the Exchange Act,[215] as it applies to OTC derivatives dealers. In general, the net capital rule requires every registered broker-dealer to maintain certain specified minimum levels of net liquid assets, or net capital, to enable each firm that falls below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal legal proceeding. The rule is designed to protect the customers of a broker-dealer from losses that can be incurred upon a broker-dealer's failure. The rule prescribes different required minimum levels of capital based upon the nature of the broker-dealer's business and whether the firm handles customer funds or securities. When calculating its net capital, a broker-dealer must reduce its capital by certain percentage amounts, or haircuts, on its securities positions. The haircuts were designed not only to cover market risk, but also other risks faced by the firm, such as credit and liquidity risk.

As noted in the Proposing Release, U.S. securities firms generally state that firms avoid to the extent feasible booking swaps and other types of OTC derivative instruments in the registered broker-dealer because of the charges for these transactions under the net capital rule./216/ In general, the rule requires a firm to subtract most unsecured credits from its net worth when calculating its net capital, and limits the hedging allowance against positions if OTC derivatives dealers have unsecured credit exposures. The net capital rule's treatment of OTC derivatives transactions generally requires broker-dealers to reserve more capital with respect to these transactions than do capital rules governing banks or foreign securities firms.

The Commission is amending Rule 15c3–1 to provide alternative methods for OTC derivatives dealers to calculate capital charges on OTC derivatives transactions in several respects. Under Appendix F of Rule 15c3–1, which is being adopted substantially as proposed, an OTC derivatives dealer is permitted to add back to its net worth any unsecured credits arising from transactions in eligible OTC derivative instruments.[217] These will include unsecured accrued receivables as well as unsecured counterparty exposure in the OTC instruments. Appendix F also allows an OTC derivatives dealer to use VAR models to compute its market risk charges on proprietary positions instead of using the haircut structure under paragraph (c)(2)(vi) of the current rule. As mentioned above, the current haircut approach allows more limited offsetting among positions than the normal VAR model would permit when computing capital charges. Appendix F also allows an OTC derivatives dealer to use a less severe regime for credit risk, as described below.

Currently, some dealers use VAR models as part of their risk management systems. These firms use VAR modeling to analyze, control, and report the level of market risk from their trading activities. A VAR estimate is the loss that is not expected to be exceeded at the chosen confidence level for some time period. In practice, VAR models aggregate several components of price risk into a single quantitative measure of the potential for loss. In addition, VAR is based on a number of underlying mathematical assumptions and firm-specific inputs. For example, VAR models typically assume normality and that future return distributions and correlations can be predicted by past returns.[218]

[213] 17 CFR 240.11a1–2.

[214] This means that the associated person for whom the member is effecting the transaction must have derived, during its preceding fiscal year, more than 50% of its gross revenues from one or more of the sources specified in Section 11(a)(1)G)(i). *See* Rule 11a1–2 (17 CFR 240.11a1–2).

[215] 17 CFR 240.15c3–1.

[216] *See* Proposing Release, Section II.E.1., 62 FR at 67946.

[217] An unsecured receivable from an affiliated entity must be deducted to the extent the receivable is not collateralized with readily marketable securities.

[218] There is a wide variety of secondary source information discussing both the positive and negative aspects of VAR. *See* Philippe Jorion, *Value at Risk: The New Benchmark for Controlling Market Risk* (1996) (explaining how to use VAR to manage market risk); JP Morgan, *RiskMetrics-Technical Document* (1994) (providing a detailed description of RiskMetrics, which is JP Morgan's proprietary statistical model for quantifying market risk in fixed income and equity portfolios); Tanya Styblo Beder, *VAR: Seductive but Dangerous,* Financial Analysts Journal, September–October 1995, at 12 (giving an extensive analysis of the different results from applying three common VAR methods to three model portfolios); Darrell Duffie and Jun Pan, *An Overview of Value at Risk,* The Journal of Derivatives, Spring 1997, at 7 (giving a broad overview of VAR models); Darryll Hendricks, *Evaluation of Value-at-Risk Models Using Historical Data,* Federal Reserve Bank of New York Economic

Continued

2. Reasons for Allowing OTC Derivatives Dealers To Use Value-at-Risk Models

During the past few years, the Commission has actively participated in several international undertakings to gain further experience with the use of VAR models to measure market and credit risk. For example, through its membership in the International Organization of Securities Commissions (''IOSCO''), the Commission has been cooperating with the Basle Committee on Banking Supervision (''Basle Committee'')[219] with respect to the use of proprietary VAR models to determine bank capital requirements for market risk.[220]

Further, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, the ''U.S. Banking Agencies'') have adopted rules implementing the Capital Accord[221] for U.S. banks and bank holding companies.[222] Appendix F is generally consistent with the U.S. Banking Agencies' rules, and incorporates the qualitative and quantitative conditions imposed on banking institutions.

By allowing OTC derivatives dealers to use VAR models in calculating their net capital requirement, the Commission has an opportunity to gain valuable experience with the use of these models by entities within its jurisdiction. This experience will enable the Commission to reassess its current rules for determining capital charges for market risk and determine whether more intensive subjective examinations are needed to ensure compliance with Commission regulations concerning the use of models.

The adoption of a more flexible approach for determining capital requirements for OTC derivatives dealers is appropriate because of the special nature of their business and the additional financial responsibility requirements applicable to these firms. The final rule requires an OTC derivatives dealer to maintain a minimum of $100 million in tentative net capital[223] and at least $20 million in net capital. OTC derivatives dealers are prohibited from accepting or holding customer funds or securities or generally from owing money or securities to customers in connection with securities activities. OTC derivatives dealers are, however, allowed to hold counterparty collateral or owe money or securities to counterparties, but only as a result of contractual commitments. Finally, OTC derivatives dealers are required to establish risk management controls pursuant to Rule 15c3–4.

3. Discussion of Net Capital Requirements

a. *Rule 15c3–1(a)(5).* Under paragraph (a)(5) of Rule 15c3–1, OTC derivatives dealers are required to maintain tentative net capital of not less than $100 million and net capital of not less than $20 million. In the Proposing Release, the Commission requested comment on whether the $100 million tentative net capital and $20 million net capital requirements would be adequate to ensure against excessive leverage and risks other than credit or market risk.[224] Many commenters declined to comment on the minimum required amount.[225] One commenter opposed any minimum tentative net capital requirement because other U.S. broker-dealers are not required to maintain minimum tentative net capital under the net capital rule, and because it believed that U.S. firms, and particularly small-sized, medium-sized, and newly established OTC derivatives dealers, would be at a competitive disadvantage.[226]

The final rule contains the minimum requirements of $100 million in tentative net capital and $20 million in net capital. The minimum tentative net capital and net capital requirements are necessary to ensure against excessive leverage and risks other than credit or market risk, all of which are now factored into the current haircuts. Further, while the mathematical assumptions underlying VAR may be useful in projecting possible daily trading losses under ''normal'' market conditions, VAR may not help firms measure losses that fall outside of normal conditions, such as during steep market declines.[227] Accordingly, the minimum capital requirements provide additional safeguards to account for possible extraordinary losses or decreases in liquidity during times of stress which are not incorporated into VAR calculations.

b. *Appendix F.* Appendix F applies only to an OTC derivatives dealer that elects to be subject to the Appendix and has its application to use Appendix F approved by the Commission. An OTC derivatives dealer that elects to be subject to Appendix F is required to calculate specific capital charges for market and credit risk. It is also required to maintain a VAR model that meets certain minimum qualitative and quantitative requirements described in Appendix F, and it must adopt risk management control procedures as provided in Rule 15c3–4.

i. Application Requirement. An OTC derivatives dealer must be authorized by the Commission to compute capital charges for market and credit risk pursuant to Appendix F. To request this authorization, an OTC derivatives dealer must file an application with the Commission describing its VAR model, including whether the firm has developed its own model, whether the firm intends to use VAR or alternative methods to calculate net capital, and how the qualitative and quantitative aspects described in Appendix F are incorporated into the model, and a description of its risk management and control procedures.[228]

More specifically, the application must include (1) an executive summary of information provided in the application; (2) a description of the

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Policy Review, April 1996, at 39 (examining twelve approaches to VAR modeling on portfolios that do not include options or other securities with non-linear pricing); and Robert Litterman, *Hot Spots and Hedges,* Goldman Sachs Risk Management Series (1996) (giving a detailed analysis on portfolio risk management, including how to identify the primary sources of risk and how to reduce these risks).

[219] The Governors of the G–10 countries established the Basle Committee in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters.

[220] In July 1995, IOSCO's Technical Committee issued a paper stating that further information and analysis was required before the Technical Committee could consider the use of internal models by securities firms to set regulatory capital standards for market risk. Due to the differences between banks and securities firms, the Technical Committee believed that more work was necessary before allowing securities firms to use VAR models to establish their capital requirements. *The Implications for Securities Regulators of the Increased Use of Value At Risk Models by Securities Firms,* Technical Committee of IOSCO, July 1995.

[221] The Basle Accord, or Capital Accord, is a common measurement system and a minimum standard for capital adequacy of international banks in the G–10 countries.

[222] Federal Reserve System, Docket No. R–0884; Department of the Treasury, Office of the Comptroller of the Currency, Docket No. 96–18; Federal Deposit Insurance Corporation, RIN 3064–AB64 (Sept. 6, 1996), 61 FR 47358.

[223] For an OTC derivatives dealer that elects to compute its market risk charges under Appendix F, the term ''tentative net capital'' means the net capital of an OTC derivatives dealer before deducting charges for market and credit risk as computed pursuant to Appendix F and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in eligible OTC derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of Rule 15c3–1.

[224] Proposing Release, Section II.E.3.a., 62 FR at 67947.

[225] *See* Section V.A.1. of the Comment Summary.

[226] DESCO Letter, pp. 9–10.

[227] Models such as the one specified in Appendix F typically measure exposure at the first percentile, and steep market declines are, by definition, below the first percentile.

[228] *See* Sections II.F.3.b.iv. and v. below for a description of the qualitative and quantitative requirements.

statistical models used for pricing OTC derivative instruments and for computing VAR, a description of the applicant's controls over those models, and a statement regarding whether the firm has developed its own internal VAR model; and (3) a description of the policies and procedures which the dealer employs in association with its internal risk management control systems.[229] The application must also describe any alternative methods that the OTC derivatives dealer intends to use to compute its market risk charge for equity instruments, and categories of securities having no ready market or which are below investment grade. Further, an OTC derivatives dealer that wants to use internal credit ratings for counterparties that are not rated by a nationally recognized statistical rating organization (''NRSRO'' or ''rating organization'') must also include in its application a description of its credit rating categories and rating procedures.

The Commission is amending Rule 30–3 of the Rules of Practice to delegate its authority to approve or deny, in full or in part, applications of OTC derivatives dealers to use Appendix F of Rule 15c3–1 to the Director of the Division of Market Regulation.[230] A denial of an application by the Division would be reviewable by the Commission.[231] The Commission will grant the application and authorize the OTC derivatives dealer to compute its net capital under Appendix F if the dealer has adopted (1) the internal risk management control systems required under Rule 15c3–4; and (2) a VAR model that meets the criteria in paragraphs (e)(1) and (e)(2) of Appendix F. All application information submitted will be kept confidential, in accordance with the rules.

Commenters noted the importance of including provisions for the review of risk management practices, policies, and procedures employed by OTC derivatives dealers, to assure that they are being executed in accordance with their intended purposes.[232] Accordingly, pursuant to the final rule, an OTC derivatives dealer is required to obtain authorization from the Commission before it may adopt any material changes to its VAR or other models, including changes in the qualitative or quantitative aspects of VAR models, before it may materially change the categories of non-marketable securities it wishes to include in its VAR model, or before it may materially alter its internal risk management control systems. If an OTC derivatives dealer desires to materially change its VAR model or internal risk management control systems, it must file an amended application with the Commission describing the changes. The OTC derivatives dealer will be authorized by the Commission to implement the proposed changes if the Commission determines that the changes meet the compliance standards of Rule 15c3–4 and Appendix F, and the amended application complements the internal review requirements imposed by those provisions. The final rule also clarifies that an OTC derivatives dealer will be in violation of the net capital rule if it fails to comply in all material respects with the internal risk management control systems under Rule 15c3–4.

ii. Market Risk. OTC derivatives dealers electing to apply Appendix F pursuant to the final rule must deduct from their net worth a capital charge for market risk[233] that is equal to the sum of its VAR charge, alternative charges for equity instruments and non-marketable securities, and the charge for residual positions. First, OTC derivatives dealers may use the VAR method to calculate capital charges for market risk exposure for transactions in eligible OTC derivative instruments and other proprietary positions of the OTC derivatives dealer. Under the VAR method, a market risk capital charge is equal to the VAR of its positions multiplied by a factor specified in Appendix F.[234]

Second, an OTC derivatives dealer may use an alternative method of computing the market risk capital charge for equity instruments, including OTC options. This alternative method may also be used by a firm that does not receive Commission authorization to use a VAR model for equity instruments. Under the alternative method, an OTC derivatives dealer must deduct from its net worth an amount equal to the largest theoretical loss calculated in accordance with the theoretical pricing model set forth in Appendix A of Rule 15c3–1.[235] The OTC derivatives dealer is permitted to use its own theoretical pricing model as long as it contains the minimum pricing factors set forth in Appendix A.[236]

Third, an OTC derivatives dealer may not use a VAR model to determine a capital charge for any category of securities having no ready market or any category of debt securities which are below investment grade, or any derivative instrument based on the value of these categories of securities, unless the Commission has granted, pursuant to paragraph (a)(1) of Appendix F, its application to use its VAR model for any such category of securities. However, the dealer may apply, pursuant to paragraph (a)(1) of Appendix F, for an alternative treatment for any such category of securities, rather than calculate the market risk capital charge for such category of securities under paragraph (c)(2) (vi) and (vii) of the new capital rule.

Fourth, to the extent that a position has not been included in the calculation of the market risk charge for VAR, or the alternative method for equity instruments or for non-marketable securities, the market risk charge for the position shall be computed under paragraph (c)(2)(vi) of Rule 15c3–1.

iii. Credit Risk. An OTC derivatives dealer electing to apply Appendix F must deduct from its net worth a capital charge for credit risk.[237] This charge has two parts and is computed on a counterparty-by-counterparty basis. First, for each counterparty with an investment or speculative grade rating, an OTC derivatives dealer must take a capital charge equal to the net replacement value in the account of the counterparty (''net replacement value'')[238] multiplied by 8%, and

[229] *See* Section II.H.3. below for a description of the risk management controls that are required by Rule 15c3–4 (17 CFR 240.15c3–4)

[230] *See* Rule 30–3(a)(7)(v) (17 CFR 200.30–3(a)(7)(v)).

[231] *See* Rules 430 and 431 (17 CFR 201.430 and 17 CFR 201.431).

[232] *See* Comment Letter from the Working Group of the Risk Management, OTC Derivative Products, and Capital Committees of the Securities Industry Association (''SIA Working Group Letter''), pp. 1–5.

[233] In general, market risk is the risk of adverse price movements resulting from a change in market prices, interest rates, volatilities, correlations, or other market factors.

[234] *See* Section II.F.3.b.iv. below for a discussion of how an OTC derivatives dealer determines the appropriate multiplication factor.

[235] 17 CFR 240.15c3–1a. The Commission recently amended Appendix A to include theoretical pricing models. Exchange Act Release No. 38248 (Feb. 6, 1997), 62 FR 6474 (Feb. 12, 1997).

[236] 17 CFR 240.15c3–1a(b)(1)(B). The minimum pricing factors under Appendix A include:

(1) The current spot price of the underlying asset;

(2) The exercise price of the option;

(3) The remaining time until the option's expiration;

(4) The volatility of the underlying asset;

(5) Any cash flows associated with ownership of the underlying asset that can reasonably be expected to occur during the remaining life of the option; and

(6) The current term structure of interest rates.

[237] In general, credit risk is the risk that a counterparty will fail to perform its obligations to an OTC derivatives dealer.

[238] For purposes of calculating credit risk charges, net replacement value in the account of a counterparty means the aggregate value of all receivables due from that counterparty (computed by marking the value of such receivables to market

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further multiplied by a counterparty factor. The counterparty factor is based on the counterparty's rating by an NRSRO. The counterparty factors range from 20% for counterparties that are highly rated to 100% for counterparties with ratings among the lowest rating categories. By using the ratings of the rating organization as a basis, the counterparty factors link the size of the credit risk capital charge to the perceived risk that the counterparty may default. A charge of 100% of the net replacement value is assessed for counterparties rated below speculative grade or that are insolvent, or in bankruptcy, or that have senior unsecured long-term debt in default.

The second part of the credit risk charge consists of a concentration charge that applies when the net replacement value in the account of any one counterparty exceeds 25% of the OTC derivatives dealer's tentative net capital. In these situations, the amount of the concentration charge is also based on the counterparty's rating by an NRSRO. For counterparties that are highly rated, the concentration charge equals 5% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital. The concentration charge increases in relation to the OTC derivatives dealer's exposure to lower rated counterparties. For example, the concentration charge for counterparties with ratings among the lowest rating categories would equal 50% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital.

In the rule as proposed, the credit risk concentration charge included a further provision that if the aggregate net replacement values of all counterparties exceeded 300% of the OTC derivatives dealer's tentative net capital, the OTC derivatives dealer would deduct 100% of the excess from its net worth. In the Proposing Release, the Commission requested comment on whether the 300% threshold for determining an overall concentration charge would result in excessive concentration risk charges.[239] Commenters suggested that the charge would have to be eliminated in order for the proposal to be viable.[240] The final rule does not contain this further provision.

If a counterparty is not rated by a rating organization, an OTC derivatives dealer is permitted to use its own ratings of the counterparty to calculate its credit risk charge. In these situations, however, the OTC derivatives dealer must demonstrate that its ratings categories and due diligence procedures, including procedures for the initial analysis and ongoing review of the counterparty (including review of the total leverage of the counterparty), are equivalent to those used by NRSROs. Several commenters requested that the Commission clarify whether the OTC derivatives dealer's demonstration must be on a counterparty-by-counterparty basis, and whether an affiliate of the dealer could rate non-NRSRO counterparties.[241] It is anticipated that authorization of an OTC derivatives dealer's credit rating methodology will occur as a whole rather than as to each counterparty. Further, the final rule provides that such ratings may be made by an affiliated bank or an affiliated broker-dealer of the OTC derivatives dealer, provided that the affiliate's methodology has been authorized by the Commission.

In the Proposing Release, the Commission requested comment on alternatives to relying on the ratings of NRSROs for approximating the risk that a counterparty may default.[242] Several commenters advocated the use of internal credit ratings of counterparties instead of or in addition to NRSRO ratings to calculate counterparty default risk.[243] Where available, NRSRO ratings are a reliable indicator of the perceived risk that a counterparty may default. Therefore, it is only in cases where a counterparty is not rated by an NRSRO that an OTC derivatives dealer is permitted to use its own ratings of a counterparty to calculate the credit risk charge.

Commenters also requested that the Commission allow the use of internal VAR models to assess credit risk regulatory capital, instead of or in addition to the proposed percentage-based credit risk capital charges. While the adoption of the current rule will provide valuable experience with the use of VAR models to assess market risk for regulatory capital purposes, the Commission has less confidence in the use of VAR for credit risk. Therefore, the Commission has determined at this time not to allow OTC derivatives dealers to employ credit risk VAR modeling in calculating net capital requirements. The Commission, however, expects to consider this issue in the future.

iv. Qualitative Requirements for Value-at-Risk Models. OTC derivatives dealers that elect to apply Appendix F are required to have VAR models that meet certain minimum qualitative requirements. The qualitative requirements address four aspects of an OTC derivatives dealer's risk management system. First, an OTC derivatives dealer's VAR model must be integrated into, and thus relied upon, in the OTC derivatives dealer's daily risk management process. Second, an OTC derivatives dealer's policies and procedures must identify and provide for appropriate stress tests.[244] The OTC derivatives dealer's policies and procedures must identify the procedures to follow in response to the results of the stress tests as well as backtests, and the OTC derivatives dealer is required to follow these procedures. Third, an OTC derivatives dealer's VAR model and risk management systems are required to undergo both periodic reviews that are performed by internal audit staff and annual reviews that are conducted by an independent public accountant.[245] Fourth, an OTC derivatives dealer is required to conduct backtesting of its VAR model.

As to the fourth element, the OTC derivatives dealer is required to conduct backtesting by comparing each of its most recent 250 business days' actual net trading profits or losses with the corresponding daily VAR measures. In addition, once each quarter, the OTC derivatives dealer must identify the number of exceptions, that is, the number of business days for which the actual daily net trading loss, if any, exceeds the corresponding daily VAR measure. The number of exceptions determines the multiplication factor the

daily), including the effect of legally enforceable netting agreements and the application of liquid collateral.

[239] Proposing Release, Section II.E.3.b.ii., 62 FR at 67948.

[240] *See, e.g.*, SIA Letter I, p. 3; Goldman Sachs Letter, p. 4; Salomon Smith Barney Letter, p. 2; MSDW Letter, pp.18–19, iii; Merrill Lynch Letter, p. 3.

[241] *See* letters cited in Section V.A.2.b.i. of the Comment Summary.

[242] Proposing Release, Section II.E.3.b.ii., 62 FR at 67948.

[243] *See, e.g.*, ISDA Letter, p. 4; SIA Letter I, pp. 3–4; Salomon Smith Barney Letter, p. 2; MSDW Letter, pp. 15–17; Merrill Lynch Letter, p. 4.

[244] Stress tests are used to evaluate changes in the value of a firm's portfolio under extreme market conditions. Stress tests must include the core risk factors of: (1) Parallel yield curve shifts; (2) changes in the steepness of yield curves; (3) parallel yield curve shifts combined with changes in the steepness of yield curves; (4) changes in yield volatilities; (5) changes in the value of equity indices; (6) changes in equity index volatilities; (7) changes in the value of key currencies (relative to the U.S. dollar); (8) changes in foreign exchange rate volatilities; and (9) changes in swap spreads in at least the G–7 countries plus Switzerland. Stress tests should also be designed to reflect the composition of the firm's portfolio.

[245] The OTC derivatives dealer must discuss the timing and nature of the periodic review by internal audit staff as part of the application process. *See* Section II.F.3.b.i. above.

OTC derivatives dealer will be required to use for the following quarter, and which will continue to apply until the next quarter's backtesting results are obtained, unless the Commission determines that a different adjustment or other action is appropriate. Depending on the number of exceptions, the multiplication factors range from three to four. Increasing the multiplication factor in response to the number of backtesting exceptions increases an OTC derivatives dealer's market risk charge, thus requiring an OTC derivatives dealer that uses an inappropriate model to increase its net capital reserves. Although the multiplication factor increases an OTC derivatives dealer's market risk charge and corresponding capital requirement, firms are expected to work to improve the reliability of their models rather than set aside additional capital for an unreliable model.

v. *Quantitative Requirements for Value-at-Risk Models.* Appendix F also contains minimum quantitative requirements to address regulatory concerns. Because broker-dealers generally use VAR models to measure portfolio volatility on a day-to-day basis, the rule imposes certain requirements on VAR models to address regulatory capital-related concerns where a longer time horizon is appropriate. For example, OTC derivatives dealers are required to calculate VAR measures using a confidence level with a price change equivalent to a ten-business day movement in rates and prices, rather than a one-day price movement that is used in many VAR models currently used by firms for internal risk management purposes. The final rule also requires a one-year historical observation period, and addresses risks to be accounted for in VAR measures.

G. Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3

The proposed rules would have excluded from the definition of customer, pursuant to Rules 8c–1,[246] 15c2–1,[247] and 15c3–3 under the Exchange Act,[248] a counterparty to an OTC derivatives transaction that has consented, after receiving appropriate disclosures, to the unrestricted use of its collateral by an OTC derivatives dealer. Rules 8c–1, 15c2–1, 15c3–2,[249] and 15c3–3 generally restrict a broker-dealer's use of customer funds and securities to finance its business activities.

The SIA commented that the proposed exclusions should be expanded to include counterparties to permissible cash management, risk management, and financing transactions.[250] In addition, the SIA suggested that the Commission clarify that the disclosure requirement could be met in any instance in which a counterparty has entered into an agreement explicitly authorizing the repledging, rehypothecation, substitution, or other disposition of collateral provided by the counterparty.[251] Further, the SIA sought to verify that counterparties to transactions effected through a fully regulated broker-dealer would not be considered a customer of the OTC derivatives dealer for purposes of Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3.[252]

The amendments to Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3 as adopted clarify the original intent of the proposal. Further, an OTC derivatives dealer that has received collateral from a counterparty will not be carrying a free credit balance for the account of a customer for the purposes of Rule 15c3–2 if the counterparty is not a customer of the dealer pursuant to Rules 8c–1, 15c2–1, and 15c3–3. A counterparty that has delivered collateral to an OTC derivatives dealer pursuant to a transaction in an eligible OTC derivative instrument or pursuant to the OTC derivatives dealer's cash management securities activities or ancillary portfolio management securities activities is not a customer for purposes of Rules 8c–1, 15c2–1, 15c3–2, and 15c3–3, but only if the counterparty has received a prominent written notice from the OTC derivatives dealer that, at a minimum, discloses that (1) except as otherwise agreed in writing by the OTC derivatives dealer and the counterparty, the OTC derivatives dealer may repledge or otherwise use the collateral in its business; (2) in the event of the dealer's failure, the counterparty will likely be considered an unsecured creditor of the dealer as to that collateral; (3) SIPA does not protect the counterparty; and (4) the collateral will not be subject to the requirements of Rules 8c–1, 15c2–1, 15c3–2, or 15c3–3.

H. Recordkeeping and Reporting

1. Amendments to Rules 17a–3 and 17a–4; Books and Records to be Maintained by OTC Derivatives Dealers

The Proposing Release[253] stated that OTC derivatives dealers, like other registered broker-dealers, are required to comply with the books and records requirements of Rules 17a–3[254] and 17a–4[255] under the Exchange Act. Rule 17a–3 would also have been amended to require an OTC derivatives dealer to compile a register of all derivatives transactions. In addition, Rule 17a–4 would have been amended to require OTC derivatives dealers to retain records required to be made pursuant to proposed Rules 15c3–4 and 17a–12.[256]

The Commission is adopting the amendments to Rules 17a–3 and 17a–4 as proposed. As several commenters have requested, the rules have been clarified to allow the OTC derivatives dealer's books and records to be maintained by an affiliated fully regulated broker-dealer. However, the OTC derivatives dealer remains responsible for ensuring that its books and records are properly maintained in accordance with Rules 17a–3 and 17a–4.

2. Amendments to Rule 17a–11; Notification Requirements

In the Proposing Release, the Commission stated that an OTC derivatives dealer would be subject to the provisions of Rule 17a–11 under the Exchange Act,[257] which requires a

[246] 17 CFR 240.8c–1.

[247] 17 CFR 240.15c2–1.

[248] 17 CFR 240.15c3–3.

[249] 17 CFR 240.15c3–2. The Commission did not propose to amend Rule 15c3–2 in the Proposing Release. Rule 15c3–2 restricts the use by a broker or dealer of funds arising out of any free credit balance carried for the account of any customer unless the broker or dealer complies with certain notice requirements.

[250] SIA Letter I, pp. 12–13.

[251] SIA Letter I, p. 13.

[252] *Id.*; SIA Letter II, p. 5.

[253] Proposing Release, Section II.H.1., 62 FR at 67950.

[254] 17 CFR 240.17a–3. In general, Rule 17a–3 under the Exchange Act requires broker-dealers to make records concerning the purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash. In addition, the rule requires broker-dealers to make and keep ledgers reflecting securities borrowed and securities received, repurchase and reverse repurchase agreements, and a record of net capital computations.

[255] 17 CFR 240.17a–4. Rule 17a–4 under the Exchange Act specifies how long broker-dealers must keep the records required to be made under Rule 17a–3 and how long they must keep other records made in the normal course of business.

[256] *See* Proposing Release, Section II.H.1., 62 FR at 67950.

[257] 17 CFR 240.17a–11. Under Rule 17a–11, if a broker-dealer's net capital falls below the required minimum level, the broker-dealer must provide both the Commission and the broker-dealer's DEA with notice of such deficiency. A broker-dealer is also required to give same-day notice if it fails to make and keep current its books and records pursuant to Rules 17a–3 and 17a–4, and to submit a report within 48 hours detailing the steps it is taking to correct the problem. In addition, Rule 17a–11 requires a broker-dealer to give notice when it discovers any material inadequacy in its system of internal controls, or is notified of this inadequacy by its independent public accountant. In these

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broker-dealer to report capital and other operational problems to the Commission and the broker-dealer's examining authority within specified time periods.[258] In addition, Rule 17a–11 would have been amended to take into consideration the new tentative net capital requirements that would apply to an OTC derivatives dealer. An OTC derivatives dealer would have been required to provide notice to the Commission and to its examining authority when its tentative net capital dropped below 120 percent of its required minimum and when its tentative net capital dropped below its required minimum.[259]

The Commission did not receive any comments that addressed the proposed amendments to Rule 17a–11. However, as discussed in Section II.D.1. above, the Commission is not requiring an OTC derivatives dealer to enter into an agreement with the examining authority for one of its registered broker-dealer affiliates that would require the examining authority to conduct a review of the activities of the OTC derivatives dealer. Therefore, the adopted amendments to Rule 17a–11 require an OTC derivatives dealer to provide the required notices only to the Commission. With respect to tentative net capital, an OTC derivatives dealer is required to provide notice to the Commission when its tentative net capital drops below 120 percent of its required minimum and when its tentative net capital drops below its required minimum. The Commission is also amending Rule 17a–11 to require an OTC derivatives dealer to notify the Commission of backtesting exceptions identified pursuant to Appendix F of Rule 15c3–1.

3. Rule 15c3–4; Internal Risk Management Control Systems for OTC Derivatives Dealers

Pursuant to proposed Rule 15c3–4, an OTC derivatives dealer would have been required to establish a system of internal controls for monitoring and managing risks associated with its business activities. More specifically, proposed Rule 15c3–4 would have established the basic elements for the design, implementation, and review of an OTC derivatives dealer's risk management control system. The proposed rule would have required an OTC derivatives dealer to assess a number of aspects about its business environment when creating its risk management control system. For example, an OTC derivatives dealer would have been required to consider the sophistication and experience of relevant trading, risk management, and internal audit personnel, as well as the management philosophy and culture of the firm. In addition, proposed Rule 15c3–4 would have required certain elements be included in an OTC derivatives dealer's internal control systems. For example, the proposed rule would have required the unit at the firm responsible for monitoring risks to be separate from and senior to the trading units whose activity created the risks.

The SIA Working Group commented[260] that an OTC derivatives dealer's internal risk management control system should specifically address operational risk,[261] market risk,[262] credit risk,[263] liquidity risk,[264] and legal risk.[265] In response to the comment, the Commission has revised Rule 15c3–4 to clarify the specific risks to be addressed by the OTC derivatives dealer's system of internal risk management controls. In particular, Rule 15c3–4 requires that an OTC derivatives dealer's system of internal risk management controls specifically address market risk, credit risk, leverage risk, liquidity risk, legal risk, and operational risk.

Rule 15c3–4 has also been revised to require that an OTC derivatives dealer's written guidelines include the dealer's procedures to prevent it from engaging in any securities transaction that is not permitted under Rule 15a–1 or from improperly relying on certain exceptions set forth in Rule 15a–1 (including procedures to determine whether a counterparty is acting in the capacity of principal or agent).[266] Under Rule 15c3–4, the dealer's management must also periodically review the dealer's business activities for consistency with risk management guidelines. The rule has been revised to require management, as part of this process, to review whether procedures are in place to prevent the dealer from engaging in impermissible securities transactions and from improperly relying on the exceptions contained in Rule 15a–1.[267]

4. Rule 17a–12; Reports to be Made by OTC Derivatives Dealers

Proposed Rule 17a–12 would have required an OTC derivatives dealer to file quarterly Financial Operational Combined Uniform Single Reports (''FOCUS'' reports),[268] and to include with its filing the enhanced reporting information and evaluation of risks in relation to capital provisions of the Framework for Voluntary Oversight of the Derivatives Policy Group (''DPG'').[269] Proposed Rule 17a–12 would also have required an OTC derivatives dealer to file annually its audited financial statements, a corresponding audit report, and three supplemental audit reports regarding (1) material inadequacies and reportable conditions; (2) derivatives pricing and modeling procedures; and (3) compliance with internal risk management controls. The proposed rule would have established guidelines for the content and form of the annual report, accountant qualifications, the process for designating an accountant, and audit objectives. For example, among other things, the annual audit report would have been required to include a statement of financial condition, a statement of income, a statement of cash flows, a statement of

instances, the broker-dealer is required to submit a report detailing steps being taken to correct the inadequacy.

[258] Proposing Release, Section II.H.2., 62 FR at 67950.

[259] Under proposed Rule 15b9–2, an OTC derivatives dealer would have been required to enter into an agreement with the examining authority for one or more of its registered broker-dealer affiliates. Under this agreement, the examining authority would have agreed to conduct a review of the activities of the OTC derivatives dealer. *See supra* note 181 and accompanying text.

[260] SIA Working Group Letter, p. 1.

[261] Operational risk encompasses the risk of loss due to the breakdown of controls within the firm including, but not limited to, unidentified limit excesses, unauthorized trading, fraud in trading or in back office functions, inexperienced personnel, and unstable and easily accessed computer systems.

[262] Market risk involes the risk that prices or rates will adversely change due to economic forces. Such risks include adverse effects of movements in equity and interest rate markets, currency exchange rates, and commodity prices. Market risk can also include the risks associated with the cost of borrowing securities, dividend risk, and correlation risk.

[263] Credit risk comprises risk of loss resulting from counterparty default on loans, swaps, options, and other similar financial instruments during settlement.

[264] Liquidity risk includes the risk that a firm will not be able to unwind or hedge a position.

[265] Legal risk arises from possible risk of loss due to an uneforceable contract or an *ultra vires* act of a counterparty.

[266] *See* Rule 15c3–4(c)(5)(xiii) and (xiv) (17 CFR 240.15c3–4(c)(5)(xiii) and (xiv)). *See also* Rule 15a–1 (17 CFR 240.15a–1) and Section II.C.1. above, discussing revisions to proposed Rule 15a–1.

[267] *See* rule 15c3–4(d)(8) and (9) (17 CFR 240.15c3–4(d)(8) and (9)).

[268] Form X–17A–5 (17 CFR 249.617).

[269] *See Framework for Voluntary Oversight,* Derivatives Policy Group (Mar. 1995). The firms comprising the DPG consist of the six U.S. broker-dealers with the largest OTC derivatives affiliates. This group was organized to respond to the public policy interests of Congress, federal agencies, and others in the OTC derivatives activities of unregulated affiliates of SEC-registered broker-dealers and CFTC-registered futures commission merchants. The Framework for Voluntary Oversight specifies certain information that the members of the DPG have voluntarily agreed to submit regarding their OTC derivatives activities and establishes certain internal control principles that group members should follow.

changes in owners' equity, and a statement of changes in subordinated liabilities.

The SIA requested clarification as to the scope of the auditor's report regarding inventory pricing and modeling procedures.[270] More specifically, the SIA sought clarification that the objective of the review of the inventory pricing and modeling procedures was to confirm that (1) the pricing and modeling procedures relied upon by the OTC derivatives dealer conform to the procedures submitted to the Commission as part of its OTC derivatives dealer application; and (2) the procedures comply with the qualitative and quantitative standards set forth in proposed Rule 15c3–1f.[271] Further clarification was sought by the SIA and other commenters as to whether an OTC derivatives dealer would be required to file its FOCUS report monthly or quarterly and whether an OTC derivatives dealer would be required to comply with Rule 17a–5 under the Exchange Act.[272]

Rule 17a–12 has been amended to clarify the scope of the auditor's report on inventory pricing and modeling procedures. The rule requires that, at a minimum, the accountant's report on inventory pricing and modeling procedures confirm that (1) the pricing and modeling procedures relied upon by the OTC derivatives dealer conform to the procedures submitted to the Commission as part of its OTC derivatives dealer application; and (2) the procedures comply with the qualitative and quantitative standards set forth in Rule 15c3–1f. This does not imply any lessening of the auditor's normal role in the audit of the financial statements of the OTC derivatives dealer. Finally, the rule provides that an OTC derivatives dealer must file its FOCUS report quarterly, unless otherwise directed by the Commission, and amends Rule 17a–5 to clarify that an OTC derivatives dealer may comply with Rule 17a–5 by complying with the provisions of Rule 17a–12.

5. Amendments to Form X–17A–5

Proposed Rule 17a–12 would have required that certain conforming changes be made to Rule 249.617 to require OTC derivatives dealers to file the appropriate parts of Form X–17A–5, commonly known as the FOCUS report. These changes would have provided for the appropriate disclosure of the business activities of OTC derivatives dealers and the risks associated with those activities.

Under the proposed amendments to Form X–17A–5, the net capital computation worksheet would have been revised to reflect the proposed net capital requirements for OTC derivatives dealers. Other changes would have included revising the statement of financial condition and the statement of income, and eliminating the customer reserve computation and commission income line items. OTC derivatives dealers would also have been required to include certain new information in the quarterly FOCUS filing. This information would include credit concentration information, together with a geographic breakdown and a counterparty breakdown as described in the DPG Framework for Voluntary Oversight. OTC derivatives dealers would also have been required to provide, where applicable, a detailed summary of all long and short securities and commodities positions, including all OTC derivatives contracts. The SIA suggested several minor changes to the proposed amendments to Form X–17A–5.[273] For example, these suggestions included expanding the scope of covered OTC instruments to include all relevant sources of, or offsets to, market risk in an OTC derivatives dealer's portfolio. The SIA's suggestions have been incorporated into the amendments to Form X–17A–5, as adopted.

III. Costs and Benefits of the Rules and Rule Amendments

The rules and rule amendments adopted by the Commission today create a limited regulatory scheme for dealers active in the OTC derivatives market and allow U.S. securities firms to establish separately capitalized OTC derivatives dealer affiliates. OTC derivatives dealers may act as dealers in eligible OTC derivative instruments, which include both securities and non-securities OTC derivative instruments. Registration as an OTC derivatives dealer is optional and is an alternative to registration as a fully regulated broker-dealer or to conducting a more limited OTC derivatives business through an unregistered affiliate.

Under the limited regulatory scheme, an OTC derivatives dealer is able to conduct its business more efficiently and at lower cost than if it were a fully regulated broker-dealer. This is, in fact, because an OTC derivatives dealer is subject to specifically tailored capital, margin, and other broker-dealer regulatory requirements. With respect to margin in particular, OTC derivatives dealers are exempted from the margin requirements of Section 7(c) of the Exchange Act and Regulation T thereunder, provided that they comply with Section 7(d) of the Exchange Act and the requirements of Regulation U. Regulation U generally allows OTC derivatives dealers to extend credit on OTC derivative instruments on more flexible terms than Regulation T.

While registered OTC derivatives dealers will benefit from the new regulatory scheme, regulators and financial markets will also benefit if an unregistered derivatives dealer elects to register as an OTC derivatives dealer. Net capital requirements and other financial responsibility requirements imposed on registered OTC derivatives dealers help to protect against excessive leverage and business risk, and provide a cushion of capital against market declines and other risks. In addition, Commission oversight authority, including reporting and notice requirements, enable the Commission to monitor the financial and operational condition and securities activities of OTC derivatives dealers. Moreover, because an OTC derivatives dealer must adopt certain internal risk management controls that promote financial responsibility, the risk that significant losses by a single firm could undermine the securities markets as a whole is reduced.

A. Comments and Survey

In the Proposing Release, the Commission requested comment on the costs and benefits associated with the proposed rules and rule amendments.[274] More specifically, the Commission requested comment on the one-time costs of any modifications to accounting, information management, and recordkeeping systems required to implement the proposed rules and rule amendments, as well as on the continuing costs arising from compliance with the proposed rules and rule amendments. The Commission also requested comment on the benefits from the modified capital, margin, and other regulatory requirements. Commenters indicated that the new regulatory structure would result in lower capital requirements and would allow them to compete more effectively with banks and foreign dealers.[275] However, the Commission did not receive any specific cost or benefit data in response to the Proposing Release.

In an effort to obtain more specific information on the potential costs and

[270] SIA Letter I, p. 4.

[271] *Id.*

[272] 17 CFR 240.17a–5. *See* Section V.D.4.a. of the Comment Summary.

[273] SIA Letter I, pp. 16–17.

[274] Proposing Release, Section IV., 62 FR at 67952.

[275] *See* Section VI. of the Comment Summary.

benefits of operating as an OTC derivatives dealer, Commission staff asked broker-dealers to provide more specific estimates of the costs and benefits of moving OTC derivatives business to, and conducting business in the form of, an OTC derivatives dealer. Five firms that believed OTC derivative dealer registration would be cost effective provided cost information, and requested confidential treatment of the data provided to the Commission.[276] Most firms responding expected significant benefits from registering as an OTC derivatives dealer because of regulatory capital savings, increased capital efficiency, and efficiencies resulting from business consolidation. These benefits generally outweighed increased one-time and continuing operating costs associated with combining activities currently conducted in a registered broker-dealer with activities conducted in other unregistered entities. The firms that responded to the survey also stated that the margin requirements applicable to OTC derivatives dealers are beneficial in instances where the less stringent Regulation U applies to transactions instead of Regulation T, but costly to the extent Regulation U applies to offshore business not previously subject to either U.S. margin requirement.

Responses to the survey varied in terms of length and detail. Some were more qualitative than quantitative. At times respondents combined categories, making comparability and averaging more difficult. Where possible, estimated costs and benefits are provided below.

B. Benefits

1. Regulatory Capital Effects

Most firms responding to the survey identified regulatory capital effects as the most significant benefit resulting from operation as an OTC derivatives dealer. By applying Appendix F instead of taking traditional haircuts under paragraph (c)(2)(vi) of Rule 15c3–1, OTC derivatives dealers will be required to reserve less regulatory capital than they would if this business was conducted on the books of their fully regulated broker-dealer affiliates.[277] The five firms that provided estimated regulatory capital savings figures estimated an aggregate difference in net capital requirements of $1.25 billion if they registered as OTC derivatives dealers. Additionally, assuming that these firms would otherwise conduct their derivatives business through a fully regulated broker-dealer, the staff estimated that their reduced capital requirements would yield an aggregate annual benefit for the use of this capital of approximately $138 million.[278]

2. Operational Cost Savings

The firms surveyed generally predicted that they would not experience significant operational savings from operating as an OTC derivatives dealer. They predicted, but did not quantify, potential operational benefits from the consolidation of businesses into one entity. These benefits include:

- Streamlined transaction processing if all OTC derivatives activity were consolidated into one entity;
- Consolidated netting of counterparty credit exposures, and margining of counterparty net balances; and
- Consolidated transaction documentation by counterparty.

3. Decreased Margin Requirements

Most firms stated that the modified margin requirements would not be a significant benefit of registering as an OTC derivatives dealer, and did not quantify this benefit. The firms noted that margin requirements under Regulation U would be more flexible when extending credit than Regulation T, which applies to broker-dealers. They also noted, however, that with respect to business previously conducted offshore, which was not subject to Federal Reserve Board margin requirements, complying with Regulation U would increase the cost of doing business.

C. Costs

1. Costs of Combining Activities Into One Operation

A firm electing to register as an OTC derivatives dealer would incur costs to combine activities currently conducted in a registered broker-dealer with activities conducted in other unregistered entities. It also would incur continuing costs to comply with the applicable rules and rule amendments. Respondents to the survey identified, but did not uniformly quantify, the costs associated with operating as an OTC derivatives dealer. These costs include:

- Forming and registering as an OTC derivatives dealer;
- Adjusting risk management practices to conform with Rules 15c3–1 and 15c3–4;
- Enhancing and developing VAR and credit risk systems;
- Complying with minimum capital requirements;
- Making and retaining required books and records;
- Preparing and submitting FOCUS reports and annual audited financial statements;
- Responding to examination requests;
- Developing systems for compliance with the margin requirements of Regulation U;
- Subjecting offshore activities to Regulation U; and
- Hiring compliance personnel.

Five firms responding to the survey estimated that their annual operating costs would increase by at least $36 million in the aggregate to conduct business as an OTC derivatives dealer. Respondents' individual estimates of increased costs ranged from $900,000 to $26 million per year. However, they stated that the increases in operating costs were far outweighed by estimated positive regulatory capital effects. Although survey results were not uniformly comparable, estimates of some specific operational costs follow.

2. Registration as an OTC Derivatives Dealer

One firm estimated that the cost of registering an entity as an OTC derivatives dealer would be as high as $50,000. This firm noted that set-up and registration costs would likely decrease for later registrants, after the process becomes standardized.

3. Risk Management Adjustments

One firm did not consider the costs of further developing its VAR and other statistical risk models to be attributable to the OTC derivatives dealer specifically, because such development would be required in any event. This firm and another firm each estimated the cost of conforming their VAR model to the regulatory requirements to be approximately $200,000. A third firm estimated the cost of obtaining risk management systems and procedures that meet the regulatory requirements to be at least $250,000. One firm stated that the additional cost of compensating model-related personnel would be approximately $650,000 per year.

[276] Two additional firms submitted responses to the survey, but these responses are not reflected in this analysis. One firm provided limited cost information that was excluded because the firm indicated that, due to the small size of its OTC derivatives business, it is not likely to register as an OTC derivatives dealer. A second firm's response was excluded because it gave qualitative, rather than quantitative, information. A summary of the responses to the survey has been placed in Public Reference File No. S7–30–97 and is available for inspection in the Commission's Public Reference Room.

[277] Many of these firms may currently conduct their OTC derivatives business in unregistered or offshore affiliates not subject to regulatory net capital requirements.

[278] The total annual benefit was computed by multiplying the regulatory capital savings of $1.25 billion by 11%, which is the average of three estimated incremental rates of return provided by three responding firms.

4. Books and Records Requirements

Apart from a likely increase in outside auditor fees, firms generally stated that the cost of compliance with books and records and reporting requirements were not significant. One firm estimated that the cost of systems changes necessary to create and maintain OTC derivatives dealer books and records, as well as the cost of necessary compliance personnel would be $500,000 in the first year. A second firm estimated that the cost of compensating additional regulatory compliance staff would be approximately $75,000 per year. A third firm expected increased costs of $400,000 per year for audit and related services, and for hiring additional personnel in the areas of compliance, operations, and reporting.

5. Regulatory Reporting

One firm estimated that the cost for an OTC derivatives dealer to prepare the required regulatory reports would be approximately $38,000 per year. This firm also estimated that internal and external auditor fees would be $100,000 per year. Another firm estimated the cost of preparation for regulatory examinations as $75,000 per year.

6. Regulation U Margin Requirements

One firm estimated the cost of maintaining OTC derivative dealer margin to be approximately $75,000. The Commission has also considered whether systemic risk would be created by permitting OTC derivatives dealers to comply with the reduced margin requirements of Regulation U as opposed to Regulation T. Although the collection of less margin in some transactions may increase risk for OTC derivatives dealers, the systemic risk is no greater for OTC derivatives dealers than for their banking competitors. Further, this risk is offset in part by financial responsibility safeguards applicable to OTC derivatives dealers, such as the minimum capital requirements in Rule 15c3–1 and the internal risk management control systems required by Rule 15c3–4.

D. Conclusion

Based on the survey results and its own analysis, the Commission believes that the rules and rule amendments adopted today provide firms that are active in the OTC derivatives market with a cost effective alternative to conducting this business through a fully regulated broker-dealer. In addition, it is important to note that registration as an OTC derivatives dealer is optional. Thus, a firm can perform its own cost and benefit analysis to determine whether registration as an OTC derivatives dealer is an appropriate alternative for that firm.

IV. Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[279] requires the Commission, in adopting Exchange Act rules, to consider the impact any such rule would have on competition and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Furthermore, section 3(f) of the Exchange Act[280] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has considered the rules and rule amendments in light of the standards cited in sections 23(a)(2) and 3(f) of the Exchange Act.

In the Proposing Release, the Commission requested comment on the effect of the proposed rules and rule amendments on competition, efficiency, and capital formation.[281] Commenters generally indicated that the reduced capital, margin, and other regulatory requirements would allow an OTC derivatives dealer to compete more effectively with banks and foreign dealers. However, commenters did not provide detailed information or analysis on the limited regulatory scheme's effect on competition, efficiency, or capital formation.[282]

The rules and rule amendments adopted by the Commission today increase the ability of certain highly capitalized broker-dealers to compete effectively in global securities markets by removing substantial regulatory and economic barriers. Because registration as an OTC derivatives dealers is optional and is an alternative to registration as a fully regulated broker-dealer or to conducting a more limited OTC derivatives business in an unregistered entity, a firm can make its own analysis of the competitive advantages of being registered as an OTC derivatives dealer.

Major dealers in the OTC derivatives market are generally large, highly capitalized banks and securities firms. One commenter opposed any minimum tentative net capital requirement, arguing that other U.S. broker-dealers are not required to maintain minimum tentative net capital under the net capital rule, and that U.S. firms, and particularly small-sized, medium-sized, and newly established OTC derivatives dealers, would be at a competitive disadvantage.[283] It is likely that smaller firms in the OTC derivatives business will not be able to register as OTC derivatives dealers because they cannot satisfy the minimum capital requirements. This will not prevent competition, however, because these smaller firms may continue to conduct their OTC derivatives business outside of the OTC derivatives dealer regulatory structure, although they will not receive the benefits of the new rules. Further, reducing minimum capital requirements would not be consistent with investor protection.

The minimum capital requirements imposed on OTC derivatives dealers are necessary to help protect against excessive leverage and the risks associated with conducting an OTC derivatives business, and to provide a cushion of capital against severe market disturbances. It would not be appropriate, for example, to require less capital from less active OTC derivatives dealers. Firms of all sizes face risks, such as legal risk, liquidity risk, and operational risk, which are not typically incorporated into VAR calculations. Further, VAR may not measure losses that fall outside of normal conditions, such as during steep market declines. The minimum capital requirements provide additional safeguards to account for possible extraordinary losses or decreases in liquidity during times of market stress.

Two commenters suggested that the Commission address certain competitive disparities that they argued exist between exchange-traded products and seemingly similar products available in the OTC derivatives market.[284] The rules adopted today are only designed to address competitive disparities between market participants within the OTC derivatives market. They are not intended to address actual or perceived competitive disparities between OTC products and any other product or service.

The rules and rule amendments promote market efficiency and capital formation. The limited regulatory scheme provides U.S. broker-dealers with an optional alternative to conducting OTC derivatives

[279] 15 U.S.C. 78w(a)(2).

[280] 15 U.S.C. 78c(f).

[281] Proposing Release, Sections IV. and V., 62 FR at 67952–53.

[282] *See* Section VI. of the Comment Summary.

[283] DESCO Leter, pp. 9–10.

[284] CBOE Letter, pp. 1–2; Comment Letter from the Chicago Mercantile Exchange, p. 2.

transactions through fully regulated broker-dealers, but does not create significant impediments to competition. As a result of the new regulatory structure, the Commission will be better able to monitor the financial and operational activities of OTC derivatives dealers. Finally, minimum capital requirements will provide a cushion against severe market disturbances, thus reducing the risk that a single firm will experience significant losses and trigger such losses by other market participants.

V. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') regarding the rules and rule amendments under the Exchange Act that tailor capital, margin, and other broker-dealer regulatory requirements to the activities of OTC derivatives dealers has been prepared in accordance with 5 U.S.C. 604. The FRFA notes that registration as an OTC derivatives dealer is optional, and therefore will not impose any reporting requirements for those entities choosing not to become registered as OTC derivatives dealers. Those entities choosing to register as OTC derivatives dealers under the new regulatory system will be subject to the reporting requirements applicable to broker-dealers under the Exchange Act.

A. Need for the Rules and Rule Amendments

As discussed more fully in the FRFA, the rules and rule amendments are intended to give U.S. securities firms an opportunity to conduct business in a vehicle subject to modified regulation appropriate to OTC derivatives markets, and thereby to improve the efficiency and competitiveness of U.S. securities firms participating in global OTC derivatives markets. These improvements will be realized through a limited regulatory structure that is expected to impose fewer costs on firms conducting an OTC derivatives business than would be imposed under the Commission's current rules. In particular, the application of revised capital requirements and an exemption from the margin requirements of Regulation T should make it feasible for firms to conduct a business involving both securities and non-securities OTC derivative instruments within the United States. Commenters generally commended the Commission for its efforts to improve competition and efficiency.

B. Small Entities Subject to the Rules

These rules and rule amendments will not significantly affect a substantial number of small entities, as defined in the Commission's rules.[285] At the time of the Proposing Release, a broker-dealer (including any person that would be an OTC derivatives dealer) generally would be considered a small entity if (1) it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) it is not affiliated with any person (other than a natural person) that is not a small business or small organization.[286]

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis (''IRFA'') that was prepared when the new regulatory regime was proposed. The Commission did not receive any comments specifically concerning the IRFA. However, some of the commenters addressed aspects of the rules that could potentially affect small businesses. These comments are discussed below.

Under the amendments to Rule 15c3–1, OTC derivatives dealers are required to maintain at least $100 million in tentative net capital and at least $20 million in net capital. Based on these minimum capital requirements, the FRFA notes that no OTC derivatives dealer would be considered a small entity. Major dealers in OTC derivatives markets tend to be the largest, highest-capitalized banks and securities firms. The capital requirements for OTC derivatives dealers have been tailored to this market and are necessary to ensure against excessive leverage and the risks associated with conducting an OTC derivatives business, as well as to provide for a cushion of capital against severe market disturbances.

[285] On June 24, 1998, several months after the Proposing Release was published, the Commission amended its definitions of small entities. *See* Exchange Act Release No. 40122 (June 24, 1998), 63 FR 35508 (June 30, 1998). The Commission's revised definition applicable to broker-dealers, effective as of July 30, 1998, maintains the capital standard set forth in the prior version, but also expands the affiliation standard applicable to broker-dealers. *See* Rule 0–10 under the Exchange Act (17 CFR 240.0–10). Although the FRFA analyzes the rules and rule amendments under the previous definition, the analysis applies equally under the Commission's new definition.

[286] Rule 0–10 (17 CFR 240.0–10).

Registration as an OTC derivatives dealer is optional. The rules and rule amendments do not require any broker-dealer to use this alternative. Instead, all broker-dealers may consider whether, given the nature of their business or any other relevant considerations, they want to register as an OTC derivatives dealer. Accordingly, the rules and rule amendments do not impose any additional costs on any entity, including any small business, currently engaging in the business of effecting transactions in OTC derivative instruments.

The rules and rule amendments guard against excessive leverage and the risk associated with conducting an OTC derivatives business, and provide a cushion of capital against severe market disturbances. In order to do so, the final rules require that an OTC derivatives dealer maintain $100 million in tentative net capital and $20 million in net capital. Lesser net capital requirements for small entities seeking to register as OTC derivatives dealers likely would not afford sufficient protection against these risks.

Given the level of these net capital requirements, the Commission is not aware of any small business or small organizations, as defined in Rule 0–10, that could operate as OTC derivatives dealers under the rule. In any event, the Commission is not aware of any small business or small organizations, as defined in Rule 0–10, that currently are active as dealers in OTC derivatives markets. In the Proposing Release, the Commission specifically requested comment on whether there were small entities that act as dealers in OTC derivatives, and what effect, if any, the proposed rules and rule amendments would have on their activities. No small entities, as defined in Rule 0–10 under the Exchange Act, submitted comments addressing this issue. Only one commenter, which is not a small entity under the Commission's rules, addressed the impact of the rules on small entities that might wish to take advantage of the new regulatory regime, noting that the $100 million tentative net capital requirement could have anti-competitive consequences for small-and medium-sized firms and newer entrants to the OTC derivatives business.

The final rules and rule amendments contain no limitations on the ability of small entities to participate as counterparties in OTC derivatives transactions with registered OTC derivatives dealers. Under proposed Rule 3b–14, the term ''permissible derivatives counterparty'' would have included a range of financial institutions, corporations, and other institutional entities with whom OTC

derivatives dealers would have been permitted to enter into OTC derivatives transactions. Like OTC derivatives dealers, these institutional counterparties are frequently large, well-capitalized entities. Nevertheless, the proposed definition may have also included potential counterparties that would be considered small entities for purposes of the Regulatory Flexibility Act (''RFA'').[287]

The Commission specifically requested comment regarding the participation of these classes of persons in OTC derivatives markets, whether any of them would be considered small entities, and what effect, if any, the proposed rules and rule amendments would have on their activities. The Commission also specifically requested comment from small entities that would not be able to satisfy the definition of permissible derivatives counterparty and, therefore, would not be eligible to engage in transactions with OTC derivatives dealers. No comments from small entities addressing this issue were received. Numerous comments, however, were received regarding the proposed definition of ''eligible derivatives counterparty.''

The majority of commenters on this issue suggested that a broad range of persons should be able to act as permissible derivatives counterparties, and believed that the definition should be expanded, at a minimum, to include natural persons having at least $5 million in total assets as proposed. Other commenters raised concerns that the proposed group of permissible derivatives counterparties could include unsophisticated persons who would need the protections provided by the securities sales practice requirements.

In response to commenters' concerns, and in light of the protections afforded through requiring intermediation of securities transactions, the final rules do not limit the persons with whom an OTC derivatives dealer may engage in transactions. Thus, to the extent that a small entity could act as a counterparty to an OTC derivatives transaction prior to the adoption of this new regulatory regime, it may still act as a counterparty to an OTC derivatives dealer under the new rules and rule amendments. Nothing in these rules, therefore, affects the ability of a small entity to participate in an OTC derivatives transaction. Other provisions of the rules that require broker-dealer intermediation will help assure protection of small entities.

[287] 5 U.S.C. 601 *et seq.*

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Because no small entity would be eligible to meet the requirements of an OTC derivatives dealer, there is no compliance requirement for small entities. The adopting release details the cost, benefits, and compliance requirements for non-small entities that elect to register as OTC derivatives dealers.

As explained in the FRFA, none of the recordkeeping, reporting, or other compliance requirements under the rules and rule amendments are expected to apply directly to counterparties that enter into transactions with OTC derivatives dealers. No small entities commented on this aspect of the proposal, and no commenters addressed the costs, if any, on small entities that acted as counterparties to OTC derivatives transactions with OTC derivatives dealers. Nevertheless, the ability of an OTC derivatives dealer to consolidate its OTC derivatives activities into a single entity under the new regulatory regime with lower capital and margin requirements could result in lower transactional costs to counterparties, including small entities.

D. Alternatives To Minimize Effect on Small Entities

As discussed further in the FRFA, the Commission has considered alternatives to the rules and rule amendments that would minimize the effects of the rules on small entities, but would still accomplish the stated objectives of improving the efficiency and competitiveness of U.S. securities firms participating in global OTC derivatives markets, and make it feasible for these firms to conduct a business involving securities and non-securities OTC derivative instruments within the United States. Several of these alternatives were considered but rejected, while other alternatives were taken into account in the final rules. The final rules and rule amendments meet the Commission's stated goals by tailoring capital, margin, and other regulatory requirements to the activities of OTC derivatives dealers, while still providing sufficient protections.

Registration as an OTC derivatives dealer is an alternative to registration as a fully regulated broker-dealer, and is optional. The Commission is not imposing any additional costs on any entity, including any small businesses, currently engaging in the business of effecting transactions in OTC derivative instruments, which could remain subject to full regulation. The proposed capital requirements, in particular, provide OTC derivatives dealers with significant alternatives for computing risk charges. Thus, firms choosing to register as OTC derivatives dealers may individually tailor the methodology they will employ to calculate their net capital on an on-going basis, subject to Commission staff authorization. This flexibility should enable firms to keep costs of compliance as low as possible.

The final rules and rule amendments guard against excessive leverage and the risks associated with conducting an OTC derivatives business, and provide a cushion of capital against severe market disturbances. In order to do so, the final rules require that an OTC derivatives dealer maintain $100 million in tentative net capital and $20 million in net capital. Lesser net capital requirements for small entities seeking to register as OTC derivatives dealers would not afford sufficient protection against these risks, and this alternative was therefore rejected. Similarly, additional exemptions from specific broker-dealer regulations under the Exchange Act for small businesses engaging in an OTC derivatives business, if there are any, would not be warranted. Moreover, the Commission is not aware of any small businesses that are currently engaged as dealers in OTC derivative instruments.

Counterparties are expected to benefit from the final rules and rule amendments by being able to engage in transactions in both securities and non-securities OTC derivative instruments with a class of registered dealers subject to Commission oversight. To the extent that a small entity could act as a counterparty to an OTC derivatives transaction prior to adoption of the new regulatory regime, it would still be able to act in that capacity after adoption of the new rules and rule amendments. Nothing in the Commission's optional regulatory regime for OTC derivatives dealers affects a counterparty's ability to enter into an OTC derivatives transaction with an OTC derivatives dealer. A copy of the FRFA may be obtained by contacting Laura S. Pruitt, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–1, Washington, DC 20549, (202) 942–0073.

VI. Paperwork Reduction Act

As set forth in the Proposing Release, Rules 15c3–4, 17a–12, Appendix F to Rule 15c3–1, and the amendments to Rule 17a–3 contain collections of information within the meaning of the Paperwork Reduction Act of 1995

(''PRA'').[288] Accordingly, the collection of information requirements contained in the rules and rule amendments were submitted to the Office of Management and Budget (''OMB'') for review and were approved by OMB which assigned the following control numbers: Rule 15c3–4, control number 3235–0497; Rule 17a–12, control number 3235–0498; Appendix F to Rule 15c3–1, control number 3235–0496; and amendments to Rule 17a–3, control number 3235–0033. The collections of information are in accordance with Section 3507 of the PRA.[289]

The collection of information obligations imposed by the rules and rule amendments are mandatory. However, it is important to note that registration as an OTC derivatives dealer is optional. The information collected, retained, and/or filed pursuant to the rules and rule amendments will be kept confidential to the extent permitted by the Freedom of Information Act (5 U.S.C. 552 *et seq.*). An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

The collections of information are necessary for persons to obtain certain benefits or to comply with certain requirements. As described in the Proposing Release, the rules and rule amendments to which the collections of information are related implement a limited regulatory system under the Exchange Act for OTC derivatives dealers. Under this limited regulatory system, OTC derivatives dealers are permitted to engage in dealing activities with respect to certain types of securities and non-securities OTC derivatives instruments, and to issue and reacquire their issued securities, without being required to comply with the full range of capital, margin, and other regulatory requirements applicable to other regulated broker-dealers.

The Proposing Release solicited comments on the proposed collections of information. No comments were received that addressed the PRA submission. However, the Commission did receive comments on other aspects of the proposal. After carefully considering the comments received, the Commission is retaining its collection of information burden estimate. Thus the descriptions and estimated burdens of the collection of information requirements have not changed, and are set forth in the Proposing Release.

[288] 44 U.S.C. 3501 *et seq.*

[289] 44 U.S.C. 3507.

VII. Statutory Authority

The Commission is amending Title 17, Chapter II of the Code of Federal Regulations pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (particularly sections 3(b), 11(a), 15(a), 15(b), 15(c), 17(a), 23, and 36 thereof (15 U.S.C. 78c(b), 78k(a), 78o(a), 78o(b), 78o(c), 78q(a), 78w, and 78mm)).

Text of Rules and Rule Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as set forth below.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by removing the period after paragraph (a)(7)(iv) and in its place adding ''; and'' and by adding paragraphs (a)(7)(v), (a)(64), (a)(65) and (a)(66) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(7) * * *

(v) To review applications of OTC derivatives dealers filed pursuant to Appendix F of § 240.15c3–1f of this chapter, and to grant or deny such applications in full or in part.

* * * * *

(64) Pursuant to § 240.15a–1(b)(1) of this chapter, to issue orders identifying other permissible securities activities in which an OTC derivatives dealer may engage.

(65) Pursuant to § 240.15a–1(b)(2) of this chapter, to issue orders determining that a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument.

(66) Pursuant to § 240.17a–12 of this chapter:

(i) To authorize the issuance of orders requiring OTC derivatives dealers to file, pursuant to § 240.17a–12(a)(ii) of this chapter, monthly, or at such times as shall be specified, Part IIB of Form X–17A–5 (§ 249.617 of this chapter) and such other financial and operational information as shall be specified.

(ii) Pursuant to § 240.17a–12(n) of this chapter, to consider applications by OTC derivatives dealers for exemptions from, and extensions of time within which to file, reports required by § 240.17a–12 of this chapter, and to grant or deny such applications.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. By adding §§ 240.3b–12 through 240.3b–15 to read as follows:

§ 240.3b–12 Definition of OTC derivatives dealer.

The term *OTC derivatives dealer* means any dealer that is affiliated with a registered broker or dealer (other than an OTC derivatives dealer), and whose securities activities:

(a) Are limited to:

(1) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(2) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(3) Engaging in cash management securities activities;

(4) Engaging in ancillary portfolio management securities activities; and

(5) Engaging in such other securities activities that the Commission designates by order pursuant to § 240.15a–1(b)(1); and

(b) Consist primarily of the activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section; and

(c) Do not consist of any other securities activities, including engaging in any transaction in any security that is not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(d) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options,

forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

§ 240.3b–13 Definition of eligible OTC derivative instrument.

(a) Except as otherwise provided in paragraph (b) of this section, the term *eligible OTC derivative instrument* means any contract, agreement, or transaction that:

(1) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, one or more commodities, securities, currencies, interest or other rates, indices, quantitative measures, or other financial or economic interests or property of any kind; or

(2) Involves any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence; or

(3) Involves any combination or permutation of any contract, agreement, or transaction or underlying interest, property, or event described in paragraphs (a)(1) or (a)(2) of this section.

(b) The term *eligible OTC derivative instrument* does not include any contract, agreement, or transaction that:

(1) Provides for the purchase or sale of a security, on a firm basis, unless:

(i) The settlement date for such purchase or sale occurs at least one year following the trade date or, in the case of an eligible forward contract, at least four months following the trade date; or

(ii) The material economic features of the contract, agreement, or transaction consist primarily of features of a type described in paragraph (a) of this section other than the provision for the purchase or sale of a security on a firm basis; or

(2) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, any security (or group or index of securities), and is:

(i) Listed on, or traded on or through, a national securities exchange or registered national securities association, or facility or market thereof; or

(ii) Except as otherwise determined by the Commission by order pursuant to § 240.15a–1(b)(2), one of a class of fungible instruments that are standardized as to their material economic terms.

(c) The Commission may issue an order pursuant to § 240.15a–1(b)(3) clarifying whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument.

(d) For purposes of this section, the term *eligible forward contract* means a forward contract that provides for the purchase or sale of a security other than a government security, provided that, if such contract provides for the purchase or sale of margin stock (as defined in Regulation U of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR Part 221), such contract either:

(1) Provides for the purchase or sale of such stock by the issuer thereof (or an affiliate that is not a bank or a broker or dealer); or

(2) Provides for the transfer of transaction collateral in an amount that would satisfy the requirements, if any, that would be applicable assuming the OTC derivatives dealer party to such transaction were not eligible for the exemption from Regulation T of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 220, set forth in § 240.36a1–1.

§ 240.3b–14 Definition of cash management securities activities.

The term *cash management securities activities* means securities activities that are limited to transactions involving:

(a) Any taking possession of, and any subsequent sale or disposition of, collateral provided by a counterparty, or any acquisition of, and any subsequent sale or disposition of, collateral to be provided to a counterparty, in connection with any securities activities of the dealer permitted under § 240.15a–1 or any non-securities activities of the dealer that involve eligible OTC derivative instruments or other financial instruments;

(b) Cash management, in connection with any securities activities of the dealer permitted under § 240.15a–1 or any non-securities activities of the dealer that involve eligible OTC derivative instruments or other financial instruments; or

(c) Financing of positions of the dealer acquired in connection with any securities activities of the dealer permitted under § 240.15a–1 or any non-securities activities that involve eligible OTC derivative instruments or other financial instruments.

§ 240.3b–15 Definition of ancillary portfolio management securities activities.

(a) The term *ancillary portfolio management securities activities* means securities activities that:

(1) Are limited to transactions in connection with:

(i) Dealer activities in eligible OTC derivative instruments;

(ii) The issuance of securities by the dealer; or

(iii) Such other securities activities that the Commission designates by order pursuant to § 240.15a–1(b)(1); and

(2) Are conducted for the purpose of reducing the market or credit risk of the dealer or consist of incidental trading activities for portfolio management purposes; and

(3) Are limited to risk exposures within the market, credit, leverage, and liquidity risk parameters set forth in:

(i) The trading authorizations granted to the associated person (or to the supervisor of such associated person) who executes a particular transaction for, or on behalf of, the dealer; and

(ii) The written guidelines approved by the governing body of the dealer and included in the internal risk management control system for the dealer pursuant to § 240.15c3–4; and

(4) Are conducted solely by one or more associated persons of the dealer who perform substantial duties for, or on behalf of, the dealer in connection with its dealer activities in eligible OTC derivative instruments.

(b) The Commission may issue an order pursuant to § 240.15a–1(b)(4) clarifying whether certain securities activities are within the scope of ancillary portfolio management securities activities.

5. Section 240.8c–1 is amended by revising paragraph (b)(1) to read as follows:

§ 240.8c–1 Hypothecation of customers' securities.

* * * * *

(b) * * *

(1) The term *customer* shall not include any general or special partner or any director or officer of such member, broker or dealer, or any participant, as such, in any joint, group or syndicate account with such member, broker or dealer or with any partner, officer or director thereof. The term also shall not include any counterparty who has delivered collateral to an OTC derivatives dealer pursuant to a transaction in an eligible OTC derivative instrument, or pursuant to the OTC derivatives dealer's cash management securities activities or ancillary portfolio management securities activities, and who has received a prominent written

notice from the OTC derivatives dealer that:

(i) Except as otherwise agreed in writing by the OTC derivatives dealer and the counterparty, the dealer may repledge or otherwise use the collateral in its business;

(ii) In the event of the OTC derivatives dealer's failure, the counterparty will likely be considered an unsecured creditor of the dealer as to that collateral;

(iii) The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa through 78lll) does not protect the counterparty; and

(iv) The collateral will not be subject to the requirements of § 240.8c–1, § 240.15c2–1, § 240.15c3–2, or § 240.15c3–3;

* * * * *

6. By adding § 240.11a1–6 to read as follows:

§ 240.11a1–6 Transactions for certain accounts of OTC derivatives dealers.

A transaction effected by a member of a national securities exchange for the account of an OTC derivatives dealer that is an associated person of that member shall be deemed to be of a kind that is consistent with the purposes of section 11(a)(1) of the Act (15 U.S.C. 78k(a)(1)), the protection of investors, and the maintenance of fair and orderly markets if, assuming such transaction were for the account of a member, the member would have been permitted, under section 11(a) of the Act and the other rules thereunder (with the exception of § 240.11a1–2), to effect the transaction.

7. By adding § 240.15a–1 under the undesignated section heading ''Exemption of Certain OTC Derivatives Dealers'' to read as follows:

§ 240.15a–1 Securities activities of OTC derivatives dealers.

Preliminary Note: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§ 240.15b9–2), regular broker-dealer margin rules (§ 240.36a1–1), and application of the Securities Investor Protection Act of 1970 (§ 240.36a1–2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§ 240.15a–1), specified internal risk management control systems (§ 240.15c3–4), recordkeeping obligations (§ 240.17a–3(a)(10)), and reporting responsibilities (§ 240.17a–12). They are also subject to alternative net capital treatment (§ 240.15c3–1(a)(5)). This rule 15a–1 uses a number of defined terms in setting forth the securities activities in which an OTC derivatives dealer may engage: ''OTC derivatives dealer,'' ''eligible OTC derivative instrument,'' ''cash management securities activities,'' and ''ancillary portfolio management securities activities.'' These terms are defined under Rules 3b–12 through 3b–15 (§ 240.3b–12 through § 240.3b–15).

(a) The securities activities of an OTC derivatives dealer shall:

(1) Be limited to:

(i) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(ii) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(iii) Engaging in cash management securities activities;

(iv) Engaging in ancillary portfolio management securities activities; and

(v) Engaging in such other securities activities that the Commission designates by order pursuant to paragraph (b)(1) of this section; and

(2) Consist primarily of the activities described in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section; and

(3) Not consist of any other securities activities, including engaging in any transaction in any security that is not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(b) The Commission, by order, entered upon its own initiative or after considering an application for exemptive relief, may clarify or expand the scope of eligible OTC derivative instruments and the scope of permissible securities activities of an OTC derivatives dealer. Such orders may:

(1) Identify other permissible securities activities;

(2) Determine that a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument;

(3) Clarify whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument; or

(4) Clarify whether certain securities activities are within the scope of ancillary portfolio management securities activities.

(c) To the extent an OTC derivatives dealer engages in any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, such transaction shall be effected through a registered broker or dealer (other than an OTC derivatives dealer) that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is an affiliate of the OTC derivatives dealer, except that this paragraph (c) shall not apply if:

(1) The counterparty to the transaction with the OTC derivatives dealer is acting as principal and is:

(i) A registered broker or dealer;

(ii) A bank acting in a dealer capacity, as permitted by U.S. law;

(iii) A foreign broker or dealer; or

(iv) An affiliate of the OTC derivatives dealer; or

(2) The OTC derivatives dealer is engaging in an ancillary portfolio management securities activity, and the transaction is in a foreign security, and a registered broker or dealer, a bank, or a foreign broker or dealer is acting as agent for the OTC derivatives dealer.

(d) To the extent an OTC derivatives dealer induces or attempts to induce any counterparty to enter into any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, any communication or contact with the counterparty concerning the transaction (other than clerical and ministerial activities conducted by an associated person of the OTC derivatives dealer) shall be conducted by one or more registered persons that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is associated with an affiliate of the OTC derivatives dealer, except that this paragraph (d) shall not apply if the counterparty to the transaction with the OTC derivatives dealer is:

(1) A registered broker or dealer;

(2) A bank acting in a dealer capacity, as permitted by U.S. law;

(3) A foreign broker or dealer; or

(4) An affiliate of the OTC derivatives dealer.

(e) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

(f) For purposes of this section, the term *affiliate* means any organization (whether incorporated or unincorporated) that directly or indirectly controls, is controlled by, or is under common control with, the OTC derivatives dealer.

(g) For purposes of this section, the term *foreign broker or dealer* means any person not resident in the United States (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by § 240.15a–6) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) or ''dealer'' in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).

(h) For purposes of this section, the term *foreign security* means any security (including a depositary share issued by a United States bank, provided that the depositary share is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904)) issued by a person not organized or incorporated under the laws of the United States, provided the transaction that involves such security is not effected on a national securities exchange or on a market operated by a registered national securities association; or a debt security (including a convertible debt security) issued by an issuer organized or incorporated under the laws of the United States that is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904).

(i) For purposes of this section, the term *registered person* is:

(A) A natural person who is associated with a registered broker or dealer and is registered or approved under the rules of a self-regulatory organization of which such broker or dealer is a member; or

(B) If the counterparty to the transaction with the OTC derivatives dealer is a resident of a jurisdiction other than the United States, a natural person who is not resident in the United States and is associated with a broker or dealer that is registered or licensed by a foreign financial regulatory authority in the jurisdiction in which such counterparty is resident or in which such natural person is located, in accordance with applicable legal requirements, if any.

8. Section 240.15b1–1 is amended to revise paragraph (a) to read as follows:

§ 240.15b1–1 Application for registration of brokers or dealers.

(a) An application for registration of a broker or dealer that is filed pursuant to section 15(b) of the Act (15 U.S.C. 78o(b)) shall be filed on Form BD (§ 249.501 of this chapter) in accordance with the instructions to the form. A broker or dealer that is an OTC derivatives dealer shall indicate where appropriate on Form BD that the type of business in which it is engaged is that of acting as an OTC derivatives dealer.

* * * * *

9. By adding § 240.15b9–2 to read as follows:

§ 240.15b9–2 Exemption from SRO membership for OTC derivatives dealers.

An OTC derivatives dealer, as defined in § 240.3b–12, shall be exempt from any requirement under section 15(b)(8) of the Act (15 U.S.C. 78o(b)(8)) to become a member of a registered national securities association.

10. Section 240.15c2–1 is amended to revise paragraph (b)(1) to read as follows:

§ 240.15c2–1 Hypothecation of customers' securities.

* * * * *

(b) * * *

(1) The term *customer* shall not include any general or special partner or any director or officer of such broker or dealer, or any participant, as such, in any joint, group or syndicate account with such broker or dealer or with any partner, officer or director thereof. The term also shall not include a counterparty who has delivered collateral to an OTC derivatives dealer pursuant to a transaction in an eligible OTC derivative instrument, or pursuant to the OTC derivatives dealer's cash management securities activities or ancillary portfolio management securities activities, and who has received a prominent written notice from the OTC derivatives dealer that:

(i) Except as otherwise agreed in writing by the OTC derivatives dealer and the counterparty, the dealer may repledge or otherwise use the collateral in its business;

(ii) In the event of the OTC derivatives dealer's failure, the counterparty will likely be considered an unsecured creditor of the dealer as to that collateral;

(iii) The Securities Investor Protection Act of 1970 (15 U.S.C 78aaa through 78lll) does not protect the counterparty; and

(iv) The collateral will not be subject to the requirements of § 240.8c–1, § 240.15c2–1, § 240.15c3–2, or § 240.15c3–3;

* * * * *

11. Section 240.15c2–5 is amended by adding paragraph (d) to read as follows:

§ 240.15c2–5 Disclosure and other requirements when extending or arranging credit in certain transactions.

* * * * *

(d) This section shall not apply to a transaction involving the extension of credit by an OTC derivatives dealer, as defined in § 240.3b–12, if the transaction is exempt from the provisions of Section 7(c) of the Act (15 U.S.C. 78g(c)) pursuant to § 240.36a1–1.

12. Section 240.15c3–1 is amended to add a sentence following the first sentence in the introductory text of paragraph (a); adding paragraphs (a)(5) and (c)(15) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) * * * In lieu of applying paragraphs (a)(1) and (a)(2) of this section, an OTC derivatives dealer shall maintain net capital pursuant to paragraph (a)(5) of this section. * * *

(5) In accordance with Appendix F to this section (§ 240.15c3–1f), the Commission may grant an application by an OTC derivatives dealer when calculating net capital to use the market risk standards of Appendix F as to some or all of its positions in lieu of the provisions of paragraph (c)(2)(vi) of this section and the credit risk standards of Appendix F to its receivables (including counterparty net exposure) arising from transactions in eligible OTC derivative instruments in lieu of the requirements of paragraph (c)(2)(iv) of this section. An OTC derivatives dealer shall at all times maintain tentative net capital of not less than $100 million and net capital of not less than $20 million.

* * * * *

(c) * * *

(15) The term *tentative net capital* shall mean the net capital of a broker or dealer before deducting the securities haircuts computed pursuant to paragraph (c)(2)(vi) of this section and the charges on inventory computed pursuant to Appendix B to this section (§ 240.15c3–1b). However, for purposes of paragraph (a)(5) of this section, the term *tentative net capital* means the net capital of an OTC derivatives dealer before deducting the charges for market and credit risk as computed pursuant to Appendix F to this section (§ 240.15c3–1f) or paragraph (c)(2)(vi) of this section, if applicable, and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in eligible OTC derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of this section.

* * * * *

13. By adding § 240.15c3–1f to read as follows:

§ 240.15c3–1f Optional Market and Credit Risk Requirements for OTC Derivatives Dealers (Appendix F to 17 CFR 240.15c3–1)

Application Requirements

(a) An OTC derivatives dealer may apply to the Commission for authorization to compute capital charges for market and credit risk pursuant to this Appendix F in lieu of computing securities haircuts pursuant to § 240.15c3–1(c)(2)(vi).

(1) An OTC derivatives dealer's application shall contain the following information:

(i) *Executive summary.* An OTC derivatives dealer shall include in its application an Executive Summary of information provided to the Commission.

(ii) *Description of methods for computing market risk charges.* An OTC derivatives dealer shall provide a description of all statistical models used for pricing OTC derivative instruments and for computing value-at-risk (''VAR''), a description of the applicant's controls over those models, and a statement regarding whether the firm has developed its own internal VAR models. If the OTC derivatives dealer's VAR model incorporates empirical correlations across risk categories, the dealer shall describe its process for measuring correlations and describe the qualitative and quantitative aspects of the model which at a minimum must adhere to the criteria set forth in paragraph (e) of this Appendix F. The application shall further state whether the OTC derivatives dealer intends to use an alternative method for computing its market risk charge for equity instruments and, if applicable, a description of how its own theoretical pricing model contains the minimum pricing factors set forth in Appendix A (§ 240.15c3–1a). The application shall also describe any category of securities having no ready market or any category of debt securities which are below investment grade for which the OTC derivatives dealer wishes to use its VAR model to calculate its market risk charge or for which it wishes to use an alternative method for computing this charge and a description of how those charges would be determined.

(iii) *Internal risk management control systems.* An OTC derivatives dealer shall provide a comprehensive description of its internal risk management control systems and how those systems adhere to the requirements set forth in § 240.15c3–4(a) through (d).

(2) The Commission may approve the application after reviewing the application to determine whether the OTC derivatives dealer:

(i) Has adopted internal risk management control systems that meet the requirements set forth in § 240.15c3–4; and

(ii) Has adopted a VAR model that meets the requirements set forth in paragraphs (e)(1) and (e)(2) of this Appendix F.

(3) If the OTC derivatives dealer materially amends its VAR model or internal risk management control systems as described in its application, including any material change in the categories of non-marketable securities that it wishes to include in its VAR model, the dealer shall file an application describing the changes which must be approved by the Commission before the changes may be implemented. After reviewing the application for changes to the dealer's VAR model or internal risk management control systems to determine whether, with the changes, the OTC derivatives dealer's VAR model and internal risk management control systems would meet the requirements set forth in this Appendix F and § 240.15c3–4, the Commission may approve the application.

(4) The applications provided for in this paragraph (a) shall be considered filed when received at the Commission's principal office in Washington, DC. All applications filed pursuant to this paragraph (a) shall be deemed to be confidential.

Compliance With § 240.15c3–4

(b) An OTC derivatives dealer must be in compliance in all material respects with § 240.15c3–4 regarding its internal risk management control systems in order to be in compliance with § 240.15c3–1.

Market Risk

(c) An OTC derivatives dealer electing to apply this Appendix F shall compute a capital charge for market risk which shall be the aggregate of the charges computed below:

(1) *Value-at-Risk.* An OTC derivatives dealer shall deduct from net worth an amount for market risk for eligible OTC derivative instruments and other positions in its proprietary or other accounts equal to the VAR of these positions obtained from its proprietary VAR model, multiplied by the appropriate multiplication factor in paragraph (e)(1)(iv)(C) of this Appendix F. The OTC derivatives dealer may not elect to calculate its capital charges under this paragraph (c)(1) until its application to use the VAR model has been approved by the Commission.

(2) *Alternative method for equities.* An OTC derivatives dealer may elect to use this alternative method to calculate its market risk for equity instruments, including OTC options, upon approval by the Commission on application by the dealer. Under this alternative method, the deduction for market risk must be the amount computed pursuant to Appendix A to Rule 15c3–1 (§ 240.15c3–1a). In this computation, the OTC derivatives dealer may use its own theoretical pricing model provided that it contains the minimum pricing factors set forth in Appendix A.

(3) *Non-marketable securities.* An OTC derivatives dealer may not use a VAR model to determine a capital charge for any category of securities having no ready market or any category of debt securities which are below investment grade or any derivative instrument based on the value of these categories of securities, unless the Commission has granted, pursuant to paragraph (a)(1) of this Appendix F, its application to use its VAR model for any such category of securities. The dealer in any event may apply, pursuant to paragraph (a)(1) of this Appendix F, for an alternative treatment for any such category of securities, rather than calculate the market risk capital charge for such category of securities under § 240.15c3–1(c)(2)(vi) and (vii).

(4) *Residual positions.* To the extent that a position has not been included in the calculation of the market risk charge in paragraphs (c)(1) through (c)(3) of this section, the market risk charge for the position shall be computed under § 240.15c3–1(c)(2)(vi).

Credit Risk

(d) The capital charge for credit risk arising from an OTC derivatives dealer's transactions in eligible OTC derivative instruments shall be:

(1) The net replacement value in the account of a counterparty (including the effect of legally enforceable netting agreements and the application of liquid collateral) that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default;

(2) As to a counterparty not otherwise described in paragraph (d)(1) of this section, the net replacement value in the account of the counterparty (including the effect of legally enforceable netting agreements and the application of liquid collateral) multiplied by 8%, and further multiplied by the counterparty factor. The counterparty factors are:

(i) 20% for counterparties with ratings for senior unsecured long-term debt or commercial paper in the two highest rating categories by a nationally

recognized statistical rating organization (''NRSRO'');

(ii) 50% for counterparties with ratings for senior unsecured long-term debt in the third and fourth highest ratings categories by an NRSRO; and

(iii) 100% for counterparties with ratings for senior unsecured long-term debt below the four highest rating categories; and

(3) A concentration charge where the net replacement value in the account of any one counterparty (other than a counterparty described in paragraph (d)(1) of this section) exceeds 25% of the OTC derivatives dealer's tentative net capital, calculated as follows:

(i) For counterparties with ratings for senior unsecured long-term debt or commercial paper in the two highest rating categories by an NRSRO, 5% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital;

(ii) For counterparties with ratings for senior unsecured long-term debt in the third and fourth highest rating categories by an NRSRO, 20% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital; and

(iii) For counterparties with ratings for senior unsecured long-term debt below the four highest rating categories, 50% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital.

(4) Counterparties that are not rated by an NRSRO may be rated by the OTC derivatives dealer, or by an affiliated bank or affiliated broker-dealer of the OTC derivatives dealer, upon approval by the Commission on application by the OTC derivatives dealer. After reviewing the application to determine whether the credit rating procedures and rating categories are equivalent to those used by NRSROs and that such ratings are current, the Commission may approve the application. The OTC derivatives dealer must make and keep current a record of the basis for the credit rating for each counterparty. The record must be preserved for a period of not less than three years, the first two years in an easily accessible place.

VAR Models

(e) An OTC derivatives dealer's VAR model must meet the following qualitative and quantitative requirements:

(1) *Qualitative requirements.* An OTC derivatives dealerapplying this Appendix F must have a VAR model that meets the following minimum qualitative requirements:

(i) The OTC derivatives dealer's VAR model must be integrated into the firm's daily risk management process;

(ii) The OTC derivatives dealer must conduct appropriate stress tests of the VAR model, and develop appropriate procedures to follow in response to the results of such tests;

(iii) The OTC derivatives dealer must conduct periodic reviews (which may be performed by internal audit staff) of its VAR model. The OTC derivatives dealer's VAR model also must be subject to annual reviews conducted by independent public accountants; and

(iv) The OTC derivatives dealer must conduct backtesting of the VAR model pursuant to the following procedures:

(A) Beginning one year after the OTC derivatives dealer begins using its VAR model to calculate its net capital, the OTC derivatives dealer must conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss with the corresponding daily VAR measures generated for determining market risk capital charges and calibrated to a one-day holding period and a 99 percent, one-tailed confidence level;

(B) Once each quarter, the OTC derivatives dealer must identify the number of exceptions, that is, the number of business days for which the actual daily net trading loss, if any, exceeded the corresponding daily VAR measure; and

(C) An OTC derivatives dealer must use the multiplication factor indicated in Table 1 of this Appendix F in determining its capital charge for market risk until it obtains the next quarter's backtesting results, unless the Commission determines that a different adjustment or other action is appropriate.

Table 5.—Multiplication Factor Based on Results of Backtesting

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

(2) *Quantitative requirements.* An OTC derivatives dealer applying this Appendix F must have a VAR model that meets the following minimum quantitative requirements:

(i) The VAR measures must be calculated on a daily basis using a 99 percent, one-tailed confidence level with a price change equivalent to a ten-business day movement in rates and prices;

(ii) The effective historical observation period for VAR measures must be at least one year, and the weighted average time lag of the individual observations cannot be less than six months. Historical data sets must be updated at least every three months and reassessed whenever market prices or volatilities are subject to large changes;

(iii) The VAR measures must include the risks arising from the non-linear price characteristics of options positions and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates or prices. An OTC derivatives dealer must measure the volatility of options positions by different maturities;

(iv) The VAR measures may incorporate empirical correlations within and across risk categories, provided that the OTC derivatives dealer has described its process for measuring correlations in its application to apply this Appendix F and the Commission has approved its application. In the event that the VAR measures do not incorporate empirical correlations across risk categories, the OTC derivatives dealer must add the separate VAR measures for the four major risk categories in paragraph (e)(2)(v) of this Appendix F to determine its aggregate VAR measure; and

(v) The OTC derivatives dealer's VAR model must use risk factors sufficient to measure the market risk inherent in all covered positions. The risk factors must address, at a minimum, the following major risk categories: interest rate risk, equity price risk, foreign exchange rate risk, and commodity price risk. For material exposures in the major currencies and markets, modeling techniques must capture, at a minimum, spread risk and must incorporate enough segments of the yield curve to capture differences in volatility and less-than-perfect correlation of rates along the yield curve. An OTC derivatives dealer must provide the Commission with evidence that the OTC derivatives dealer's VAR model takes account of specific risk in positions, including specific equity risk, if the OTC derivatives dealer intends to utilize its VAR model to compute capital charges for equity price risk.

14. Section 240.15c3–3 is amended to revise paragraph (a)(1) to read as follows, and in paragraph (h) to revise the phrase ''§ 240.17a–5,'' to read ''§§ 240.17a–5 or 240.17a–12,''.

§ 240.15c3–3 Customer protection—reserves and custody of securities.

(a) * * *

(1) The term *customer* shall mean any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker or government securities dealer. The term shall, however, include another broker or dealer to the extent that broker or dealer maintains an omnibus account for the account of customers with the broker or dealer in compliance with Regulation T (12 CFR 220.1 through 220.19). The term shall not include a general partner or director or principal officer of the broker or dealer or any other person to the extent that person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer. The term also shall not include a counterparty who has delivered collateral to an OTC derivatives dealer pursuant to a transaction in an eligible OTC derivative instrument, or pursuant to the OTC derivatives dealer's cash management securities activities or ancillary portfolio management securities activities, and who has received a prominent written notice from the OTC derivatives dealer that:

(i) Except as otherwise agreed in writing by the OTC derivatives dealer and the counterparty, the dealer may repledge or otherwise use the collateral in its business;

(ii) In the event of the OTC derivatives dealer's failure, the counterparty will likely be considered an unsecured creditor of the dealer as to that collateral;

(iii) The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) does not protect the counterparty; and

(iv) The collateral will not be subject to the requirements of § 240.8c–1, § 240.15c2–1, § 240.15c3–2, or § 240.15c3–3;

* * * * *

15. By adding § 240.15c3–4 to read as follows:

§ 240.15c3–4 Internal risk management control systems for OTC derivatives dealers.

(a) An OTC derivatives dealer shall establish, document, and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities, including market, credit, leverage, liquidity, legal, and operational risks.

(b) An OTC derivatives dealer shall consider the following when adopting its internal control system guidelines, policies, and procedures:

(1) The ownership and governance structure of the OTC derivatives dealer;

(2) The composition of the governing body of the OTC derivatives dealer;

(3) The management philosophy of the OTC derivatives dealer;

(4) The scope and nature of established risk management guidelines;

(5) The scope and nature of the permissible OTC derivatives activities;

(6) The sophistication and experience of relevant trading, risk management, and internal audit personnel;

(7) The sophistication and functionality of information and reporting systems; and

(8) The scope and frequency of monitoring, reporting, and auditing activities.

(c) An OTC derivatives dealer's internal risk management control system shall include the following elements:

(1) A risk control unit that reports directly to senior management and is independent from business trading units;

(2) Separation of duties between personnel responsible for entering into a transaction and those responsible for recording the transaction in the books and records of the OTC derivatives dealer;

(3) Periodic reviews (which may be performed by internal audit staff) and annual reviews (which must be conducted by independent certified public accountants) of the OTC derivatives dealer's risk management systems;

(4) Definitions of risk, risk monitoring, and risk management; and

(5) Written guidelines, approved by the OTC derivatives dealer's governing body, that include and discuss the following:

(i) The OTC derivatives dealer's consideration of the elements in paragraph (b) of this section;

(ii) The scope, and the procedures for determining the scope, of authorized activities or any nonquantitative limitation on the scope of authorized activities;

(iii) Quantitative guidelines for managing the OTC derivatives dealer's overall risk exposure;

(iv) The type, scope, and frequency of reporting by management on risk exposures;

(v) The procedures for and the timing of the governing body's periodic review of the risk monitoring and risk management written guidelines, systems, and processes;

(vi) The process for monitoring risk independent of the business or trading units whose activities create the risks being monitored;

(vii) The performance of the risk management function by persons independent from or senior to the business or trading units whose activities create the risks;

(viii) The authority and resources of the groups or persons performing the risk monitoring and risk management functions;

(ix) The appropriate response by management when internal risk management guidelines have been exceeded;

(x) The procedures to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

(xi) The procedures requiring the documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(xii) The procedures authorizing specified employees to commit the OTC derivatives dealer to particular types of transactions;

(xiii) The procedures to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a–1; and

(xiv) The procedures to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a–1(c) and § 240.15a–1(d), including the procedures to determine whether a counterparty is acting in the capacity of principal or agent.

(d) Management must periodically review, in accordance with written procedures, the OTC derivatives dealer's business activities for consistency with risk management guidelines including that:

(1) Risks arising from the OTC derivatives dealer's OTC derivatives activities are consistent with prescribed guidelines;

(2) Risk exposure guidelines for each business unit are appropriate for the business unit;

(3) The data necessary to conduct the risk monitoring and risk management function as well as the valuation process over the OTC derivatives dealer's portfolio of products is accessible on a timely basis and information systems are available to capture, monitor, analyze, and report relevant data;

(4) Procedures are in place to enable management to take action when internal risk management guidelines have been exceeded;

(5) Procedures are in place to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

(6) Procedures are in place to identify and address any deficiencies in the operating systems and to contain the extent of losses arising from unidentified deficiencies;

(7) Procedures are in place to authorize specified employees to commit the OTC derivatives dealer to particular types of transactions, to specify any quantitative limits on such authority, and to provide for the oversight of their exercise of such authority;

(8) Procedures are in place to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a–1;

(9) Procedures are in place to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a–1(c) and § 240.15a–1(d), including procedures to determine whether a counterparty is acting in the capacity of principal or agent;

(10) Procedures are in place to provide for adequate documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(11) Personnel resources with appropriate expertise are committed to implementing the risk monitoring and risk management systems and processes; and

(12) Procedures are in place for the periodic internal and external review of the risk monitoring and risk management functions.

16. Amend § 240.17a–3, in paragraph (a)(4)(vi) by revising the phrase ''Rule 17a–13 and Rule 17a–5 hereunder'' to read ''§ 240.17a–5, § 240.17a–12, and § 240.17a–13'' and by adding a sentence to the end of paragraph (a)(10) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers, and dealers.

(a) * * *

(10) * * * An OTC derivatives dealer shall also keep a record of all eligible OTC derivative instruments as defined in § 240.3b–13 in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.

* * * * *

17. Amend § 240.17a–4 in paragraph (b)(8) introductory text by revising the phrase ''Part IIA'' to read ''Part IIA or Part IIB'' and by revising the phrase ''§ 240.17a–5(i)(xv)'' to read ''§ 240.17a–5(d) and § 240.17a–12(b)''; in paragraph (b)(8)(xv) by revising the phrase ''§ 240.17a–5'' to read ''§ 240.17a–5 and § 240.17a–12''; by adding paragraph (b)(10) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(10) The records required to be made pursuant to § 240.15c3–4 and the results of the periodic reviews conducted pursuant to § 240.15c3–4(d).

* * * * *

18. Amend § 240.17a–5 by adding paragraph (o) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(o) *Compliance with § 240.17a–12.* An OTC derivatives dealer may comply with § 240.17a–5 by complying with the provisions of § 240.17a–12.

19. Amend § 240.17a–11 by redesignating paragraph (b) as paragraph (b)(1) and by adding paragraph (b)(2) to read as follows; in paragraph (c) introductory text by revising the phrase ''(c)(1), (c)(2) or (c)(3)'' to read ''(c)(1), (c)(2), (c)(3) or (c)(4)''; by revising paragraph (c)(3) and by adding paragraph (c)(4) to read as follows; in paragraph (e) introductory text by adding the phrase ''or § 240.17a–12(f)(2)'' after the phrase ''240.17a–5(h)(2)'' and by adding the phrase ''or § 240.17a–12(e)(2)'' after the phrase ''240.17a–5(g)''; and in paragraph (h) by revising the phrase ''§ 240.15c3–3(i) and § 240.17a–5(h)(2)'' to read ''§ 240.15c3–3(i), § 240.17a–5(h)(2), and § 240.17a–12(f)(2)''.

§ 240.17a–11 Notification provisions for brokers and dealers.

* * * * *

(b) * * *

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer shall also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3–1. The notice shall specify the OTC derivatives dealer's net capital and tentative net capital requirements, and its current amount of net capital and tentative net capital.

(c) * * *

(3) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that its total net capital is less than 120 percent of the broker's or dealer's required minimum net capital, or if a computation made by an OTC derivatives dealer pursuant to § 240.15c3–1 shows that its total tentative net capital is less than 120 percent of the dealer's required minimum tentative net capital.

(4) The occurrence of the fourth and each subsequent backtesting exception under § 240.15c3–1f(e)(1)(iv) during any 250 business day measurement period.

* * * * *

20. By adding § 240.17a–12 to read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

(a) *Filing of quarterly reports.* (1) This paragraph (a) shall apply to every OTC derivatives dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o).

(i) Every OTC derivatives dealer shall file Part IIB of Form X–17A–5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter.

(ii) Upon receiving from the Commission written notice that additional reporting is required, an OTC derivatives dealer shall file monthly, or at such times as shall be specified, Part IIB of Form X–17A–5 (§ 249.617 of this chapter) and such other financial or operational information as shall be required by the Commission.

(2) The reports provided for in this paragraph (a) shall be considered filed when received at the Commission's principal office in Washington, DC. All reports filed pursuant to this paragraph (a) shall be deemed to be confidential.

(3) Upon written application by an OTC derivatives dealer to the Commission, the Commission may extend the time for filing the information required by this paragraph (a). The written application shall be filed with the Commission at its principal office in Washington DC.

(b) *Annual filing of audited financial statements.* (1)(i) Every OTC derivatives dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o) shall file annually, on a calendar or fiscal year basis, a report which shall be audited by a certified public accountant. Reports filed pursuant to this paragraph (b) shall be as of the same fixed or determinable date each year, unless a change is approved in writing by the Commission.

(ii) An OTC derivatives dealer succeeding to and continuing the business of another OTC derivatives dealer need not file a report under this paragraph (b) as of a date in the fiscal or calendar year in which the succession occurs if the predecessor

OTC derivatives dealer has filed a report in compliance with this paragraph (b) as of a date in such fiscal or calendar year.

(2) The annual audit report shall contain a Statement of Financial Condition (in a format and on a basis which is consistent with the total reported on the Statement of Financial Condition contained in Form X–17A–5 (§ 249.617 of this chapter), Part IIB, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors. Such statements shall be in a format which is consistent with such statements as contained in Form X–17A–5 (§ 249.617 of this chapter), Part IIB. If the Statement of Financial Condition filed in accordance with instructions to Form X–17A–5 (§ 249.617 of this chapter), Part IIB, is not consolidated, a summary of financial data for subsidiaries not consolidated in the Part IIB Statement of Financial Condition as filed by the OTC derivatives dealer shall be included in the notes to the consolidated statement of financial condition reported on by the certified public accountant. The summary financial data shall include the assets, liabilities, and net worth or stockholders' equity of the unconsolidated subsidiaries.

(3) Supporting schedules shall include, from Part IIB of Form X–17A–5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.15c3–1.

(4) A reconciliation, including appropriate explanations, of the Computation of Net Capital under § 240.15c3–1 contained in the audit report with the broker's or dealer's corresponding unaudited most recent Part IIB filing shall be filed with the report when material differences exist. If no material differences exist, a statement so indicating shall be filed.

(5) The annual audit report shall be filed not more than sixty days after the date of the financial statements.

(6) Two copies of the annual audit report shall be filed at the Commission's principal office in Washington, DC.

(c) *Nature and form of reports.* The financial statements filed pursuant to paragraph (b) of this section shall be prepared and filed in accordance with the following requirements:

(1) An audit shall be conducted by a certified public accountant who shall be in fact independent as defined in paragraph (f) of this section, and it shall give an opinion covering the statements filed pursuant to paragraph (b) of this section.

(2) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation, the financial statements and schedules are true and correct and neither the OTC derivatives dealer, nor any partner, officer, or director, as the case may be, has any significant interest in any counterparty or in any account classified solely as that of a counterparty. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the OTC derivatives dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) All of the statements filed pursuant to paragraph (b) of this section shall be confidential except that they shall be available for use by any official or employee of the United States or by any other person to whom the Commission authorizes disclosure of such information as being in the public interest.

(d) *Qualification of accountants.* The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the State of his principal office.

(e) *Designation of accountant.* (1) Every OTC derivatives dealer shall file no later than December 10 of each year with the Commission's principal office in Washington, DC a statement indicating the existence of an agreement, dated no later than December 1 of that year, with a certified public accountant covering a contractual commitment to conduct the OTC derivatives dealer's annual audit during the following calendar year.

(2) If the agreement is of a continuing nature, providing for successive yearly audits, no further filing is required. If the agreement is for a single audit, or if the continuing agreement previously filed has been terminated or amended, a new statement must be filed by the required date.

(3) The statement shall be headed ''Notice pursuant to § 240.17a–12(e)'' and shall contain the following information:

(i) Name, address, telephone number, and registration number of the OTC derivatives dealer;

(ii) Name, address, and telephone number of the certified public accounting firm; and

(iii) The audit date of the OTC derivatives dealer for the year covered by the agreement.

(4) Notwithstanding the date of filing specified in paragraph (e)(1) of this section, every OTC derivatives dealer shall file the notice provided for in paragraph (e) of this section within 30 days following the effective date of registration as an OTC derivatives dealer.

(f) *Independence of accountant.* A certified public accountant shall be independent in accordance with the provisions of § 210.2–01(b) and (c) of this chapter.

(g) *Replacement of accountant.* (1) An OTC derivatives dealer shall file a notice that must be received by the Commission's principal office in Washington, DC not more than 15 business days after:

(i) The OTC derivatives dealer has notified the certified public accountant whose opinion covered the most recent financial statements filed under paragraph (b) of this section that the certified public accountant's services will not be utilized in future engagements; or

(ii) The OTC derivatives dealer has notified a certified public accountant who was engaged to give an opinion covering the financial statements to be filed under paragraph (b) of this section that the engagement has been terminated; or

(iii) A certified public accountant has notified the OTC derivatives dealer that it will not continue under an engagement or give an opinion covering the financial statements to be filed under paragraph (b) of this section; or

(iv) A new certified public accountant has been engaged to give an opinion covering the financial statements to be filed under paragraph (b) of this section without any notice of termination having been given to or by the previously engaged certified public accountant.

(2) Such notice shall state the date of notification of the termination of the engagement of the former certified public accountant or the engagement of the new certified public accountant, as applicable, and the details of any disagreements existing during the 24 months (or the period of the engagement, if less) preceding such termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which disagreements, if not resolved to the satisfaction of the former certified public accountant, would have caused the former certified public accountant to make reference to them in connection with the report on the subject matter of the disagreements.

The disagreements required to be reported in response to the preceding sentence include both those resolved to the former certified public accountant's satisfaction and those not resolved to the former certified public accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level (*i.e.*, between principal financial officers of the OTC derivatives dealer and personnel of the certified public accounting firm responsible for rendering its report). The notice shall also state whether the certified public accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The OTC derivatives dealer shall also request the former certified public accountant to furnish the OTC derivatives dealer with a letter addressed to the Commission stating whether the former certified public accountant agrees with the statements contained in the notice of the OTC derivatives dealer and, if not, stating the respects in which the former certified public accountant does not agree. The OTC derivatives dealer shall file three copies of the notice and the certified public accountant's letter, one copy of which shall be manually signed by the sole proprietor, or a general partner or a duly authorized corporate officer, as appropriate, and by the certified public accountant.

(h) *Audit objectives.* (1) The audit shall be made in accordance with U.S. Generally Accepted Auditing Standards and shall include a review of the accounting system, the internal accounting controls, and procedures for safeguarding securities including appropriate tests thereof for the period since the date of the prior audited financial statements. The audit shall include all procedures necessary under the circumstances to enable the certified public accountant to express an opinion on the statement of financial condition, results of operations, cash flows, and the Computation of Net Capital under § 240.15c3–1. The scope of the audit and review of the accounting system, the internal accounting controls, and procedures for safeguarding securities shall be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in the following are disclosed:

(i) The accounting system;

(ii) The internal accounting controls; and

(iii) The procedures for safeguarding securities.

(2) A material inadequacy in the accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures referred to in paragraph (h) (1) of this section that must be reported under these audit objectives includes any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to:

(i) Inhibit an OTC derivatives dealer from promptly completing securities transactions or promptly discharging its responsibilities to counterparties, other brokers and dealers, or creditors;

(ii) Result in material financial loss;

(iii) Result in material misstatements of the OTC derivatives dealer's financial statements; or

(iv) Result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in paragraphs (h)(2)(i), (ii), or (iii) of this section.

(i) *Extent and timing of audit procedures.* (1) The extent and timing of audit procedures are matters for the certified public accountant to determine on the basis of its review and evaluation of existing internal controls and other audit procedures performed in accordance with U.S. Generally Accepted Auditing Standards and the audit objectives set forth in paragraph (h) of this section.

(2) If, during the course of the audit or interim work, the certified public accountant determines that any material inadequacies exist in the accounting system, internal accounting controls, procedures for safeguarding securities, or as otherwise defined in paragraph (h)(2) of this section, then the certified public accountant shall call it to the attention of the chief financial officer of the OTC derivatives dealer, who shall inform the Commission by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a–11(e) and (g). The OTC derivatives dealer shall also furnish the certified public accountant with a copy of said notice to the Commission by telegram or facsimile within the same 24 hour period. If the certified public accountant fails to receive such notice from the OTC derivatives dealer within that 24 hour period, or if the certified public accountant disagrees with the statements contained in the notice of the OTC derivatives dealer, the certified public accountant shall inform the Commission by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a–11(g). Such report from the certified public accountant shall, if the OTC derivatives dealer failed to file a notice, describe any material inadequacies found to exist. If the OTC derivatives dealer filed a notice, the certified public accountant shall file a report detailing the aspects, if any, of the OTC derivatives dealer's notice with which the certified public accountant does not agree.

(j) *Accountant's report, general provisions.*—(1) *Technical requirements.* The certified public accountant's report shall be dated; be signed manually; indicate the city and state where issued; and identify without detailed enumeration the financial statements and schedules covered by the report.

(2) *Representations as to the audit.* The certified public accountant's report shall state that the audit was made in accordance with U.S. Generally Accepted Auditing Standards; state whether the certified public accountant reviewed the procedures followed for safeguarding securities; and designate any auditing procedures deemed necessary by the certified public accountant under the circumstances of the particular case that have been omitted, and the reason for their omission. Nothing in this section shall be construed to imply authority for the omission of any procedure which certified public accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required under this section.

(3) *Opinion to be expressed.* The certified public accountant's report shall state clearly the opinion of the certified public accountant:

(i) In respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(ii) As to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements.

(4) *Exceptions.* Any matters to which the certified public accountant takes exception shall be clearly identified, explained, and, to the extent practicable, the effect of each such exception on the related financial statements shall be provided.

(5) *Definitions.* For the purpose of this section, the terms *audit* (or *examination*), *accountant's report,* and *certified* shall have the meanings given in § 210.1–02 of this chapter.

(k) *Accountant's report on material inadequacies and reportable conditions.* The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant describing any material inadequacies or any matter that would be deemed to be a reportable condition under U.S. Generally Accepted Auditing Standards that are unresolved as of the date of the certified public accountant's report. The report shall also describe any material inadequacies found to have existed since the date of the previous audit. The supplemental report shall indicate any corrective action taken or proposed by the OTC derivatives dealer with regard to any identified material inadequacies or reportable conditions. If the audit did not disclose any material inadequacies or reportable conditions, the supplemental report shall so state.

(l) *Accountant's report on management controls.* The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the certified public accountant's opinion on the OTC derivatives dealer's compliance with its internal risk management controls. The procedures are to be performed and the report is to be prepared in accordance with U.S. Generally Accepted Auditing Standards.

(m) *Accountant's report on inventory pricing and modeling.* (1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the results of the certified public accountant's review of the broker's or dealer's inventory pricing and modeling procedures. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and by the certified public accountant conducting the review. The purpose of the review is to confirm that the pricing and modeling procedures relied upon by the OTC derivatives dealer conform to the procedures submitted to the Commission as part of its OTC derivatives dealer application, and that the procedures comply with the qualitative and quantitative standards set forth in § 240.15c3–1f.

(2) The agreed-upon procedures are to be performed and the report is to be prepared in accordance with U.S. Generally Accepted Attestation Standards.

(3) Every OTC derivatives dealer shall file prior to the commencement of the initial review, the procedures to be performed pursuant to paragraph (m)(1) of this section with the Commission's principal office in Washington, DC. Prior to the commencement of each subsequent review, every OTC derivatives dealer shall file with the Commission's principal office in Washington, DC notice of changes in the agreed-upon procedures.

(n) *Extensions and exemptions.* Upon the written request of the OTC derivatives dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

(o) *Notification of change of fiscal year.* (1) In the event any OTC derivatives dealer finds it necessary to change its fiscal year, it must file a notice of such change with the Commission's principal office in Washington, DC.

(2) Such notice shall contain a detailed explanation of the reasons for the change. Any change in the filing period for the audit report must be approved by the Commission.

(p) *Filing requirements.* For purposes of filing requirements as described in § 240.17a–12, these filings shall be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC.

21. By adding §§ 240.36a1–1 and 240.36a1–2 to read as follows:

§ 240.36a1–1 Exemptionfrom Section 7 for OTC derivatives dealers.

Preliminary Note: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§ 240.15b9–2), regular broker-dealer margin rules (§ 240.36a1–1), and application of the Securities Investor Protection Act of 1970 (§ 240.36a1–2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§ 240.15a–1), specified internal risk management control systems (§ 240.15c3–4), recordkeeping obligations (§ 240.17a–3(a)(10)), and reporting responsibilities (§ 240.17a–12). They are also subject to alternative net capital treatment (§ 240.15c3–1(a)(5)).

(a) Except as otherwise provided in paragraph (b) of this section, transactions involving the extension of credit by an OTC derivatives dealer shall be exempt from the provisions of section 7(c) of the Act (15 U.S.C. 78g(c)), provided that the OTC derivatives dealer complies with Section 7(d) of the Act (15 U.S.C. 78g(d)).

(b) The exemption provided under paragraph (a) of this section shall not apply to extensions of credit made directly by a registered broker or dealer (other than an OTC derivatives dealer) in connection with transactions in eligible OTC derivative instruments for which an OTC derivatives dealer acts as counterparty.

§ 240.36a1–2 Exemption from SIPA for OTC derivatives dealers.

Preliminary Note: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§ 240.15b9–2), regular broker-dealer margin rules (§ 240.36a1–1), and application of the Securities Investor Protection Act of 1970 (§ 240.36a1–2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§ 240.15a–1), specified internal risk management control systems (§ 240.15c3–4), recordkeeping obligations (§ 240.17a–3(a)(10)), and reporting responsibilities (§ 240.17a–12). They are also subject to alternative net capital treatment (§ 240.15c3–1(a)(5)).

OTC derivatives dealers, as defined in § 240.3b–12, shall be exempt from the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa through 78lll).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

22. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

§ 249.617 [Amended]

23. Section 249.617 is amended by revising the phrase ''and § 240.17a–11'' in the section heading to read '', § 240.17a–11, and § 240.17a–12''; and by revising the phrase ''and § 240.17a–11'' to read '', § 240.17a–11, and § 240.17a–12''.

24. Form X–17A–5 (referenced in § 249.617) is amended by adding section IIB to read as follows:

Note: Form X–17A–5 does not, and the amendments will not, appear in the Code of Federal Regulations. Part IIB of Form X–17A–5 is attached as Appendix A to this document.

Dated: October 23, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

Note: the text of Appendix A does not appear in the Code of Federal Regulations.

General Instructions

The FOCUS Report (Form X–17A–511B) constitutes the basic financial and operational report required of OTC derivatives dealers. Much of the

information required by the FOCUS report is the same or similar to the information required to be reported by broker-dealers required to file Form X–17A–5 Part II. Consequently, for those items that appear on both forms, the instructions for X–17A–5 Part II are to be followed when completing Form X–17A–5 Part IIB. The following instructions apply to new information requests and to items appearing on both forms that have been altered to better reflect an OTC derivatives dealers's unique business.

Computation of Net Capital and Required Net Capital

(Under 15c3–1 Appendix F)

Tentative Net Capital

For purposes of paragraph (a)(5) of Rule 15c3–1 of this chapter (§ 240.15c3–1), the term ''tentative net capital'' mean the net capital of an OTC derivatives dealer before deducting the charges for market and credit risk as computed pursuant to Appendix F and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in eligible OTC derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of Rule 15c3–1.

Market Risk Exposure

The capital requirement for an OTC derivatives dealer electing to apply Appendix F of Rule 240.15c3–1 is computed as follows:

(1) *Value-at-Risk.* An OTC derivatives dealer shall deduct from net worth an amount for market risk exposure for eligible OTC derivatives transactions and other positions in its proprietary or other accounts equal to the value at risk (''VAR'') of these positions obtained from its proprietary VAR model, multiplied by the appropriate multiplication factor. See paragraph (e)(1)(v)(C) of Appendix F for more information on the multiplication factor. The proprietary model used to calculate the capital requirement for market risk must be approved by the Commission prior to its use.

(2) *Alternative Method for Equities.* An OTC derivatives dealer may choose to use the Alternative Method to calculate market risk for equity instruments, including OTC options. An OTC derivatives dealer also may use this alternative method if the Commission does not approve the OTC derivatives dealer's use of VAR models for equity instruments. Under the alternative method, the deduction for market risk will be an amount equal to the largest theoretical loss calculated in accordance with the theoretical pricing model set forth in Appendix A of § 240.15c3–1. The OTC derivatives dealer may use its own theoretical pricing model as long as it contains the minimum pricing factors set forth in Appendix A.

(3) *Non-Marketable Securities.* An OTC derivatives dealer may not use a VAR model a determine a capital charge for any category of securities having no ready market or any category of debt securities which are below investment grade, or any derivative instrument based on the value of these categories of securities, unless the Commission has granted, pursuant to paragraph (a)(1) of Appendix F, its application to use its VAR model for any such category of securities. The dealer in any event may apply, pursuant to paragraph (a)(1) of Appendix F, for an alternative treatment for any such category of securities, rather than calculate the market risk capital charge for such category of securities under paragraphs (c)(2)(vi) and (vii) of § 240.15c3–1.

(4) *Residual Positions.* To the extent that a position has not been included in the calculation of the market risk charge in subparagraph (1) through (3) of this paragraph, the market risk charge for the position shall be computed under paragraph (c)(2)(vi) of § 240.15c3–1.

Credit Risk Exposure

The capital requirement for credit risk arising from an OTC derivatives dealer's eligible OTC derivatives transactions consists of a counterparty charge and a concentration charge. The counterparty charge is computed as follows:

(1) The net replacement value for each counterparty (including the effect of legally enforceable netting agreements and the application of liquid collateral) multiplied by 8% multiplied by the counterparty factor. The counterparty factors are 20% for entities with ratings for senior unsecured long term debt or commercial paper in the two highest rating categories by a nationally recognized statistical rating organization (''NRSRO''); 50% for entities with ratings of senior unsecured long term debt in the third and fourth highest ratings categories by and NRSRO; and 100% for entities with ratings for senior unsecured long term debt below the highest rating categories.

(2) The net replacement value for each counterparty (including the effect of legally enforceable netting agreements and the application of liquid collateral) that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default.

The concentration charge is computed as follows: where the net replacement value in the account of any one counterparty exceeds 25% of the OTC derivatives dealer's tentative net capital, deduct the following amounts: for couterparties with ratings for senior unsecured long-term debt or commercial paper in the two highest rating categories by an NRSRO, 5% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital; for counterparties with ranting for senior unsecured long-term debt in the third and fourth highest rating categories by an NRSRO, 20% of the amount of the net replacement value in excess of 25% of the OTC derivates dealer's tentative net capital; and for counterparties with ratings for senior unsecured long-term debt below the four highest rating categories, 50% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital.

Aggregate Securities and OTC Derivatives Positions

Provide information for each affiliated broker-dealer in a separate column, or complete a separate schedule for each affiliated broker-dealer. In the event a separate listing of a position, financial instrument or otherwise is required pursuant to any of the provisions § 240.17h–1T, the dealer should indicate as such in the appropriate section of this schedule. Where appropriate, indicate long and short positions separately.

Paperwork Reduction Act Disclosure

Part IIB of Form X–17A–5 requires an OTC derivatives dealer to file with the Commission certain financial and operational information. The form is designed to enable the Commission to ascertain the nature and scope of a dealer's over-the-counter derivatives activity and to monitor the dealer's financial condition and risk exposure.

It is estimated that an OTC derivatives dealer will spend approximately 20 hours completing Part IIB of Form X–17A–5. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

The information collected pursuant to Part IIB of Form X–17A–5 will be kept confidential.

This collection of information has been reviewed by the Office of Management and Budget (OMB) in accordance with the clearance requirements of 44 U.S.C. 3507. This collection of information has been assigned Control Number 3235–0498 by OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid number. Section 17(a) of the Securities Exchange Act of 1934 authorizes the Commission to collect the information on this Form from registrants. *See* U.S.C. 78q.

BILLING CODE 8010–01–W

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM X-17A-5

FOCUS REPORT

(Financial and Operational Combined Uniform Single Report)

PART IIB [11]

OTC DERIVATIVES DEALER

(PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM.)

THIS REPORT IS BEING FILED PURSUANT TO (Check Applicable Block(s)):

1) Rule 17a-12 [16] 2) Rule 17a-11 [18] 3) Other [26]

[13] (Name of Dealer)

[14] (SEC File No.)

[20] (Address of Principal Place of Business (DO NOT USE P. O. Box No.))

[15] (Firm I.D. No.)

[21] (City) [22] (State) [23] (Zip Code)

[24] (For Period Beginning (MM/DD/YY))

[25] (For Period Ending (MM/DD/YY))

NAME AND TELEPHONE NO. OF PERSON TO CONTACT IN REGARD TO THIS REPORT:

[30] (Name)

[31] ((Area Code) - Telephone No.)

NAME(s) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT:

OFFICIAL USE

[32] [33]

[34] [35]

[36] [37]

[38] [39]

[Does respondent carry its own customer accounts?] Yes [40] No [41]

Check here if respondent is filing an audited report: [42]

EXECUTION:

The registrant/dealer submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted.

Dated the _____ **day of** _____ **19** ____

MANUAL SIGNATURES OF:

1) _____
(Principal Executive Officer or Managing Partner)

2) _____
(Principal Financial Officer or Partner)

3) _____
(Principal Operations Officer or Partner)

ATTENTION -- Intentional misstatements or omissions of facts constitute Federal Criminal Violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78:f(a))

FOR SEC USE ONLY

TO BE COMPLETED WITH THE ANNUAL AUDIT REPORT ONLY:

CERTIFIED PUBLIC ACCOUNTANT whose opinion is contained in this report:

70
((Name) IF INDIVIDUAL, give last, first, middle name)

71
((Address) DO NOT USE P. O. Box No.)

72 (City) 73 (State) 74 (Zip Code)

DO NOT WRITE UNDER THIS LINE

FOR SEC USE ONLY

WORK LOCATION 50	REPORT DATE (MM/DD/YY) 51	DOC. SEQ. NO. 52	CARD 53

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

N 2 [100]

(Name of Dealer)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

Consolidated [198]

Unconsolidated [199]

As of (MM/DD/YY) [99]

(SEC File No.) [98]

ASSETS

Assets	Allowable	Non - Allowable	Total
1. Cash	$ [200]		$ [750]
2. Cash segregated in compliance with federal and other regulations	[210]		[760]
3. Receivable from brokers/dealers and clearing organizations:			
A. Failed to deliver	[220]		[770]
B. Securities borrowed	[240]		[780]
C. Omnibus accounts	[260]		[790]
D. Clearing organization	[280]		[800]
E. Contracts:			
1. Interest Rate	[300]		[810]
2. Currency & Foreign Exchange	[310]		[820]
3. Equity	[320]		[830]
4. Commodity	[330]		[840]
5. Other	[340]		[850]
F. Other	[350]	$ [550]	[860]
4. Receivable from customers:			
A. Securities accounts:			
1. Cash and fully secured accounts	[360]		
2. Partly secured accounts	[370]	[560]	
3. Unsecured accounts		[570]	
B. Commodity accounts	[380]	[580]	
C. Allowance for doubtful accounts	( ) [385]	( ) [590]	[870]

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets	Allowable	Non - Allowable	Total
5. Receivables from non-customers:			
A. Cash and fully secured accounts	$ 390		
B. Partly secured and unsecured accounts	400	$ 600	$ 880
6. Securities purchased under agreements to resale	410	605	890
7. Securities and spot commodities owned at market value:			
A. Bankers acceptances, certificates of deposit and commercial paper	420		
B. U.S. and Canadian government obligations	430		
C. State and municipal government obligations	440		
D. Corporate obligations	450		
E. Stocks and warrants	460		
F. Options	470		
G. Arbitrage	472		
H. Other securities	474		
I. Spot commodities	480		900
8. Securities owned not readily marketable:			
A. At cost $ 130	490	610	910
9. Other investments not readily marketable:			
A. At cost $ 140			
B. At estimated fair value	500	620	920
10. Securities borrowed under subordination agreements and partners' individual and capital securities accounts at market value:			
A. Exempted securities $ 150			
B. Other $ 160	510	630	930

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets		Allowable	Non - Allowable	Total
11. Secured demand notes - market value of collateral:				
A. Exempted securities	$ 170			
B. Other	$ 180	520	640	940
12. Investment in and receivables from affiliates, subsidiaries and associated partnerships		530	670	950
13. Property, furniture, equipment, leasehold improvements and rights under lease agreements:				
At cost (net of accumulated depreciation and amortization)		$ 540	$ 680	$ 960
14. Other Assets:				
A. Dividends and interest receivable		550	690	
B. Free shipments		560	700	
C. Loans and advances		570	710	
D. Miscellaneous		580	720	970
15. TOTAL ASSETS		$ 590	$ 740	$ 980

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY

Liabilities		Total	
16. Bank loans payable:			
A. Includable in "Formula for Reserve Requirements"		$	1460
B. Other			1470
17. Securities sold under repurchase agreement			1480
18. Payable to brokers/dealers and clearing organizations:			
A. Failed to receive:			1490
B. Securities loaned:			1500
C. Omnibus accounts:			1510
D. Clearing organization:			1520
E. Other			1570
19. Payable to customers:			
A. Securities accounts-including free credit of	$ 950		1580
B. Commodities accounts			1590
20. Payable to non - customers:			
A. Securities accounts			1600
B. Commodities accounts			1610
21. Securities sold not yet purchased at market value-			
including arbitrage of	$ 960	$	1620
22. Accounts payable and accured liabilities and expenses:			
A. Drafts payable			1630
B. Accounts payable			1640
C. Income taxes payable			1650
D. Deferred income taxes			1660
E. Accured expenses and other liabilities			1670
F. Other			1680

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

Liabilities			Total	
23. Notes and mortgages payable:				
A. Unsecured				1690
B. Secured				1700
24. Liabilities subordinated to claims of general creditors:				
A. Cash borrowings:				1710
1. from outsiders	$	970		
2. Includes equity subordination (15c3-1d) of	$	980		
B. Securities borrowings, at market value				1720
1. from outsiders	$	990		
C. Pursuant to secured demand note collateral agreements:				1730
1. from outsiders	$	1000		
2. Includes equity subordination (15c3-1d) of	$	1010		
D. Exchange memberships contributed for use of company, at market value				1740
E. Accounts and other borrowings not qualified for net capital purposes				1750
25. TOTAL LIABILITIES			$	1760

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

	Ownership Equity	Total	
26.	Sole proprietorship	$	1770
27.	Partnership-limited partners		1780
28.	Corporation:		
	A. Preferred stock		1791
	B. Common Stock		1792
	C. Additional paid-in capital		1793
	D. Retained earnings		1794
	E. Total		1795
	F. Less capital stock in treasury	( )	1796
29.	TOTAL OWNERSHIP EQUITY	$	1800
30.	TOTAL LIABILITIES AND OWNERSHIP EQUITY	$	1810

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix F)

CAPITAL

Capital

1. Total Ownership Equity		$	750
2. Deduct: Ownership Equity not Allowable for Net Capital		( )	335
3. Total Ownership Equity Qualified for Net Capital			840
4. Add: Subordinated Liabilities Approved for Net Capital			840
5. Other Allowable Credits or Deductions			840
6. Total Capital and Approved Subordinations			840
7. Non-Allowable Assets	$ 550		
8. Secured demand note deficiency	550		
9. Other Deductions and Charges	300		
10. Total Non-Allowable Assets, Other Deductions, and Charges (add lines 7 - 9)		( )	335
11. Tentative Net Capital (Must equal or exceed $100,000,000)		$	580

Computation of Net Capital Requirements and Excess Net Capital

12. Market Risk Exposure:			
A. Total Value At Risk	$ 340		
Value At Risk Components:			
1. Fixed Income (VaR)	$ 310		
2. Currency (VaR)	320		
3. Commodities (VaR)	570		
4. Equities (VaR)	350		
NOTE: The sum of the value at risk components may not equal total value at risk.			
B. Multiplication Factor	X $ 820		
C. Subtotal (If Line 12A is positive, multiply Line 12A by 12B)	820		
D. Alternative Method for Equities under Appendix A of Rule 15c3-1 (if applicable)	840		
13. Subtotal Market Risk Exposure (add Lines 12C and 12D)		$	840
14. Credit Risk Exposure:			
A. Credit Risk Charge (Counterparty)	840		
B. Concentration Charge	550		

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix F)

CAPITAL (continued)

Capital

15. Subtotal Credit Risk Exposure (add Lines 14A and 14B)	$		840
16. Net Capital (Line 11 less Lines 13 and 15)			840
17. Minimum Capital Requirement		20,000,000	580
18. Excess Net Capital (Line 16 less Line 17)	$		840

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Under (c)(3)(vi) of Rule 15c3-1)

Capital

1. Total Ownership Equity (from Statement of Financial Condition - Item 1800)		$	750
2. Deduct: Ownership Equity not allowable for Net Capital		( )	760
3. Total Ownership Equity Qualified for Net Capital			840
4. Add: Subordinated Liabilities Approved for Net Capital			840
5. Other Allowable Credits or Deductions			840
6. Total Capital and Approved Subordinations		$	840
7. Non-Allowable Assets		( )	335
8. Other Deductions and/or Charges:		( )	335
9. Secured demand note deficiency		( )	335
10. Commodity futures contracts and spot commodities proprietrary capital charges		( )	335
11. Other additions and/or allowable credits			840
12. Tentative Net Capital (must equal or exceed $100,000,000)		$	840
13. Haircuts On Securities (computed pursuant to 15c3-1(c)(2)(vi)):			
A. Fixed Income	$ 310		
B. Currency	320		
C. Commodities	570		
D. Equities	350		
14. Total deductions and/or charges		( )	335
15. Undue Concentration		( )	335
16. Other (List)		( )	335
17. Credit Risk		( )	335
18. Net Capital		$	840
19. Minimum Net Capital		$ 20,000,000	580
20. Excess Net Capital		$	840

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YY) from _____ 3932 to _____ 3933

_____ (Name of Dealer)

Number of months included in this statement [ ] 3931

STATEMENT OF INCOME (LOSS)

REVENUE

1. Contracts:			
A. Interest Rate/Fixed Income Products		$	3935
B. Over-the-counter currency and foreign exchange products for Net Capital			3937
C. Equity products			3938
D. Commodity Products			0
E. All other securities commissions			3939
F. Total securities commissions		$	3940
2. Gains or Losses on Firm Securities Trading Accounts:			
A. From market making in over-the-counter equity securities		$	3941
1. Includes gains or (losses) OTC market making in exchange listed equity securties	$ 3943		
B. From trading in debt securities			3944
C. From market making in options on a national securities exchange			3945
D. From all other trading			3949
E. Total gains or (losses)		$	3950
3. Gains or Losses on Firm Securities Investment Accounts:			
A. Includes realized gains (losses)	$ 4235		
B. Includes unrealized gains (losses)	4236		
C. Total realized and unrealised gains (losses)		$	3952
4. Other Interest			3960
5. Fees for account supervision, Investment advisory and administrative services			3975
6. Revenue from research services			3980
7. Commodities revenue			3990
8. Other revenue			3995
9. Total Revenue		$	4030

EXPENSES

10. Compensation		$	4110
11. Clerical and administrative employees' expenses			4040

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YY) from [3932] to [3933]

(Name of Dealer) Number of months included in this statement [3931]

STATEMENT OF INCOME (LOSS)

EXPENSES (continued)

12. Salaries and other employment costs for general partners, and voting stockholder officers	$	4120
A. Includes interest credited to General and Limited Partners capital accounts	$ 4130	
13. Floor brokerage paid to certain brokers (see definition)		4055
14. Commissions and clearance paid to all other brokers (see definition)		4145
15. Clearance paid to non-brokers (see definition)		4135
16. Communications		4060
17. Occupancy and equipment costs		4080
18. Promotional costs		4150
19. Interest expense		4075
A. Includes interest on accounts subject to subordination agreements	4070	
20. Losses in error account and bad debts		4170
21. Data processing costs (including service bureau service charges)		4186
22. Non-recurring charges		4190
23. Regulatory fees and expenses		4195
24. Other expenses		4100
25. Total expenses	$	4200

NET INCOME

26. Income (loss) before Federal income taxes and items below (Item 10 less Item 26)	$	4210
27. Provision for Federal income taxes (for parent only)		4220
28. Equity in earnings (losses) of unconsolidated subsidiaries not included above		4222
A. After Federal income taxes of	4238	
29. Extraordinary gains (losses)		4224
A. After Federal income taxes of	4239	
30. Cumulative effect of changes in accounting principles		4225
31. Net income (loss) after Federal income taxes and extraordinary items		4230

MONTHLY INCOME

32. Income (current month only) before provision for Federal income taxes and extraordinary items	$	4211

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, (as defined below), which have not been deducted in the computation of Net Capital.

Type of Proposed Withdrawal or Accrual (see below for code to enter)	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	Withdrawal or Maturity Date (MM/DD/YY)	Expect to Renew (Yes or No)
4600	4601	4602	$ 4603	4604	4605
4610	4611	4612	4613	4614	4615
4620	4620	4620	4620	4620	4620
4630	4630	4630	4630	4630	4630
4640	4640	4640	4640	4640	4640
4650	4650	4650	4650	4650	4650
4660	4660	4660	4660	4660	4660
4670	4670	4670	4670	4670	4670
4680	4680	4680	4680	4680	4680
4690	4690	4690	4690	4690	4690

Total $ 4699*

* To agree with the total on Recap (Item No. 4880)

OMIT PENNIES

WITHDRAWAL CODE:	DESCRIPTIONS
1	Equity Capital
2	Subordinated Liabilities
3	Accruals
4	15c3-1(c)(2)(iv) Liabilities

INSTRUCTIONS: Detail Listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation pursuant to Rule 15c-3-1(c)(2)(iv)), which could be required by the lender on demand or in less than six months.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital.

RECAP

1. Equity Capital			
A. Partnership Capital:			
1. General Partners	$		4700
2. Limited			4710
3. Undistributed Profits			4720
4. Other (describe below)			4730
5. Sole Proprietorship			4735
B. Corporation Capital:			
1. Common Stock	$		4740
2. Preferred Stock			4750
3. Retained Earings (Dividends and Other)			4760
4. Other (describe below)			4770
2. Subordinated Liabilities			
A. Secured Demand Notes	$		4780
B. Cash Subordinates			4790
C. Debentures			4800
D. Other (describe below)			4810
3. Other Anticipated Withdrawals			
A. Bonuses	$		4820
B. Voluntary Contributions to Pension or Profit Sharing Plans			4860
D. Other (describe below)			4870

4. Description of Other

_____

_____

_____

_____

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

STATEMENT OF CHANGES IN OWNERSHIP EQUITY (SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period		$	4240
A. Net Income (loss)			4250
B. Additions (includes non-conforming capital of	$ 4262		4260
C. Deductions	4272		4270
2. Balance, end of period (From item 1800)		$	4290

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO CLAIMS OF GENERAL CREDITORS

3. Balance, beginning of period		$	4300
A. Increases			4310
B. Decreases		( )	4320
4. Balance, end of period (From item 3520)		$	4330

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

FINANCIAL AND OPERATIONAL DATA

		VALUATION	NUMBER
1.	Month end total number of stock record breaks unresolved over three business days		
	A. Breaks long	$ 4890	4900
	B. Breaks short	$ 4890	4900
2.	Is the firm in compliance with Rule 17a-13 regarding periodic count and verification of securities positions and locations at least once in each calendar quarter? (Check one)	Yes 4930	No 4940
3.	Personnel employed at end of reporting period:		
	A. Income producing personnel		2045
	B. Non-Income producing personnel (all other)		2055
	C. Total		2055
4.	Actual number of tickets executed during current month of reporting period		2055
5.	Number of corrected customer confirmations mailed after settlement date		2055

	NO. OF ITEMS	DEBIT (Short Value)	NO. OF ITEMS	Credit (Long Value)
6. Money differences	2085	$ 2090	2080	$ 2055
7. Security suspense accounts	2085	$ 2090	2080	$ 2055
8. Security difference accounts	2085	$ 2090	2080	$ 2055
9. Commodity suspense accounts	2085	$ 2090	2080	$ 2055
10. Open transactions with correspondents, other brokers, clearing organizations, depositories and interoffice and inter-company accounts which could result in a charge -- unresolved amounts over 30 calendar days	2085	$ 2090	2080	$ 2055
11. Bank account reconciliations -- unresolved amounts over 30 calendar days	2085	$ 2090	2080	$ 2055
12. Open transfers over 40 calendar days, not confirmed	2085	$ 2090	2080	$ 2055
13. Transactions in reorganization accounts -- over 60 calendar days	2085	$ 2090	2080	$ 2055
14. Total	2085	$ 2090	2080	$ 2055

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

FINANCIAL AND OPERATIONAL DATA (continued)

	NO. OF ITEMS	Leger Amount	Market Value
15. Failed to deliver 11 business days or longer (21 business days or longer in the case of Municipal Securities)	2085	$ 2090	$ 2055
16. Failed to receive 11 business days or longer (21 business days or longer in the case of Municipal Securities)	2085	$ 2090	$ 2055
17. Security concentrations (See instructions in Part I):			
A. Proprietary positions			$ 2055
18. Total of personal capital borrowings due within six months			$ 2055
19. Maximum haircuts on underwriting commitments during the period			$ 2055
20. Planned capital expenditures for business expansion during next six months			$ 2055
21. Liabilities of other individuals or organizations guaranteed by respondent			$ 2055
22. Lease and rentals payable within one year			$ 2055
23. Aggregated lease and rental commitments payable for entire term of the lease			
A. Gross			$ 2055
B. Net			$ 2055

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

OTC Derivatives Dealer: as of _____

SCHEDULE I
CREDIT-CONCENTRATION REPORT FOR TWENTY LARGEST CURRENT NET EXPOSURES

Counterparty Identifier (1)	Country (2)	Industry Segment (3)	Rating (4)	Gross Replacement Value (5) Receivable (Gross Gain)	Gross Replacement Value (5) Payable (Gross Loss)	Net Replacement Value (6)	Current Net Exposure (7)	Total Credit Exposure (8)	Comments (9)
Totals									

(1) Identify counterparty by counterparty's corporate name.

(2) Identify country exposures by residence of main operating company.

(3) Report on a counterparty-by-counterparty basis by type of entity in accordance with ISDA guidelines (i.e., Primary ISDA Members, Non-Primary ISDA Members: Corporates, Financial Institutions, Government/Supranationals, or Other.

(4) Ratings are internal credit ratings as assigned by the firm. See Schedule IV for conversion of these ratings into a Nationally Recognized Statistical Rating (NRSRO) agency equivalent.

(5) Report gross replacement value (receivable and payable) (for each of the top 20 current net exposures), excluding the effect of legally enforceable netting agreements and excluding the application of collateral.

(6) Report net replacement value (for each of the top 20 current net exposures), including the effect of legally enforceable netting agreements but excluding the application of collateral.

(7) Report current net exposure (for each of the top 20 current net exposures), including the effect of legally enforceable netting agreements and the application of collateral.

(8) Report the sum of the current net exposure and the potential additional credit exposure, calculated as the maximum credit exposure expected to be exceeded with a probability of one percent over a two-week period, less current net exposure.

(9) Provide additional relevant information (e.g., details on credit enhancements, type of contract, maturity, offsetting, significant additional exposures in affiliated entities, etc.).

OTC Derivatives Dealer:

as of _____

SCHEDULE II
PORTFOLIO SUMMARY OF OTC DERIVATIVES EXPOSURES (1)

Credit Rating Category (2)	Industry Segment (3)	Current Net Exposure (4)	Net Replacement Value (5)	Gross Replacement Value (6) Receivable	Gross Replacement Value (6) Payable
XXX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
XX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
X	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
	GRAND TOTAL				

(1) See Note (1) on Schedule I.

(2) See Note (5) on Schedule I.

(3) See Note (4) on Schedule I.

(4) Net replacement value, after application of collateral.

(5) Include effect of legally enforceable netting agreements, before application of collateral.

(6) Exclude effect of netting agreements and exclude application of collateral.

OTC Derivatives Dealer:

as of _____

SCHEDULE III
GEOGRAPHIC DISTRIBUTION (1) OF OTC DERIVATIVES EXPOSURES (2)

Country	Credit Rating Category (3)	Current Net Exposure (4)	Net Replacement Value (5)	Gross Replacement Value (6) Receivable	Gross Replacement Value (6) Payable
A	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country A TOTAL				
B	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country B TOTAL				
	GRAND TOTAL				

(1) Top 10 country exposures (by residence of main operating company).

(2) See Note (1) on Schedule I.

(3) See Note (5) on Schedule I.

(4) See Note (4) on Schedule II.

(5) See Note (5) on Schedule II.

(6) See Note (6) on Schedule II.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

OTC Derivatives Dealer: as of _____

SCHEDULE IV
INTERNAL CREDIT RATING CONVERSION

Internal Credit Rating	Equivalent Ratings NRSRO 1	NRSRO 2
	Aaa	AAA
	Aa1	AA+
	Aa2	AA
	Aa3	AA-
	A1	A+
	A2	A
	A3	A-
	Baa1	BBB+
	Baa2	BBB
	Baa3	BBB-
	Ba1	BB+
	Ba2	BB
	Ba3	BB-
	B3	B+
	B2	B
	B1	B-
	CCC	CCC

OTC Derivatives Dealer:

as of _____

SCHEDULE V
NET REVENUES (1) FROM OTC DERIVATIVES (2) AND RELATED ACTIVITIES

Product Category (3)	Quarter Ended [DATE]	Month Ended [MONTH 3]	Month Ended [MONTH 2]	Month Ended [MONTH 1]
Fixed Income Products				
OTC Options				
Swaps				
Dollar				
Non-Dollar				
Currency & Foreign Exchange Products				
Equity Products				
Commodity Products				
Other Products (specify)				
Total All Products				

(1) Report net revenues from OTC derivatives activities in the specified product category after taking inro account related positions (including those that are not OTC derivatives), with net revenues defined as trading gains/losses plus interest and dividend income less dividend and interest expense (excluding all other expenses and allocable overhead).

(2) See Note (1) on Schedule I.

(3) Product types should be organized by one or more principle market categories.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

SCHEDULE VI
AGGREGATE SECURITIES AND OTC DERIVATIVE POSITIONS

I. AGGREGATE SECURITIES AND COMMODITIES POSITIONS

Aggregate Securities and Commodities Positions	LONG		SHORT	
1. U.S. Treasury securities	$	1000	$	1005
2. U.S. Government agency	$	1010	$	1015
3. Securities issued by states and political subdivisions in the U.S.	$	1020	$	1025
4. Foreign securities:				
A. Debt securities	$	1030	$	1035
B. Equity securities	$	1040	$	1045
5. Banker's acceptances	$	1050	$	1055
6. Certificates of deposit	$	1060	$	1065
7. Commercial paper	$	1070	$	1075
8. Corporate obligations	$	1080	$	1085
9. Stocks and warrants (other than arbitrage positions)	$	1090	$	1095
10. Arbitrage:				
A. Index arbitrage and program trading	$	1100	$	1105
B. Risk arbitrage	$	1110	$	1115
C. Other arbitrage	$	1120	$	1125
11. Options:				
A. Market value of put options:				
1. Listed	$	1130	$	1135
2. Unlisted	$	1140	$	1145
B. Market value of call options:				
1. Listed	$	1150	$	1155
2. Unlisted	$	1160	$	1165
12. Spot commodities	$	1170	$	1175
13. Investments with no ready market:				
A. Equity	$	1180	$	1185
B. Debt	$	1190	$	1195
C. Other (include limited partnership interests)	$	1200	$	1205
14. Other securites or commodities	$	1210	$	1215
15. Summary of delta or similar analysis (if available) (attach analysis)				

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

A. Securities	LONG	SHORT
1. When-issued securities:		
A. Gross commitments to purchase	$ 2000	$ 2005
B. Gross commitments to sell	$ 2010	$ 2015
2. Written stock option contracts:		
A. Market value, and the value of the underlying securities, of call contracts:		
1. Listed		
a. Market value	$ 2020	$ 2025
b. Value of underlying securities	$ 2030	$ 2035
2. Unlisted		
a. Market value	$ 2040	$ 2045
b. Value of underlying securities	$ 2050	$ 2055
B. Market value, and the value of the underlying securities, of put contracts:		
1. Listed		
a. Market value	$ 2060	$ 2065
b. Value of underlying securities	$ 2070	$ 2075
2. Unlisted		
a. Market value	$ 2080	$ 2085
b. Value of underlying securities	$ 2090	$ 2095
C. Market value, and the value of the underlying securities, of naked call contracts:		
1. Listed		
a. Market value	$ 2100	$ 2105
b. Value of underlying securities	$ 2110	$ 2115
2. Unlisted		
a. Market value	$ 2120	$ 2125
b. Value of underlying securities	$ 2130	$ 2035
D. Market value, and the value of the underlying securities, of naked put contracts:		
1. Listed		
a. Market value	$ 2140	$ 2145
b. Value of underlying securities	$ 2150	$ 2155
2. Unlisted		
a. Market value	$ 2160	$ 2165
b. Value of underlying securities	$ 2170	$ 2175

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
3. Futures:		
A. U.S. Treasury and mortgage-backed securities futures	$ 2020	$ 2025
B. Other futures (specify)	$ 2030	$ 2035
4. Forwards:		
A. U.S. Treasury and mortgage-backed securities	$ 2020	$ 2025
1. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Other forwards (specify)	$ 2020	$ 2025
1. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Interest Rate Swaps		
1. U.S. dollar denominated swaps:		
A. Total notional or contractual amount	$ 2000	$ 2005
B. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
C. Per counterparty breakdown. (attach schedule)		
2. Cross currency swaps:		
A. Total notional or contractual amount	$ 2000	$ 2005
B. Aggregate current cost of replacing contracts.	$ 2010	$ 2015
C. Per counterparty breakdown. (attach schedule)		
C. Foreign exchange		
1. Swaps:		
A. Total notional or contractual amount	$ 2000	$ 2005
B. Aggregate cost of replacing contracts by counterparty.	$ 2010	$ 2015
C. Per counterparty breakdown. (attach schedule)		
2. Notional or contractual amounts of commitments to purchase foreign currencies and U.S. dollar exchange:		
A. Futures	$ 2020	$ 2025

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG		SHORT	
B. Forwards	$	2020	$	2025
1. Aggregate current cost of replacing contracts by counter-party.	$	2010	$	2015
2. Per counterparty breakdown. (attach schedule).				
3. Naked written option contracts:				
A. Contractual value	$	2000	$	2005
B. Value of the underlying instruments	$	2000	$	2005
D. All other swap agreements (specify type) (attach schedule if necessary)				
1. Total notional or contractual amount	$	2000	$	2005
2. Aggregate current cost of replacing contracts by counterparty.	$	2010	$	2015
3. Per counterparty breakdown. (attach schedule)				
E. Commodities				
1. Futures	$	2020	$	2025
2. Forwards	$	2020	$	2025
1. Aggregate current cost of replacing contracts by counter-party.	$	2010	$	2015
2. Per counterparty breakdown. (attach schedule).				
3. Sold option contracts (e.g., options on individual commodities and commodities indexes)				
A. Market value, and the value of the underlying instruments, of call contracts:				
1. Listed				
a. Market value	$	2140	$	2145
b. Value of underlying instruments	$	2150	$	2155
2. Unlisted				
a. Market value	$	2160	$	2165
b. Value of underlying instruments	$	2170	$	2175
B. Market value, and the value of the underlying instruments, of put contracts:				
1. Listed				
a. Market value	$	2140	$	2145
b. Value of underlying instruments	$	2150	$	2155

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG		SHORT	
2. Unlisted				
a. Market value	$	2160	$	2165
b. Value of underlying instruments	$	2170	$	2175
C. Market value, and the value of the underlying instruments, of naked call contracts:				
1. Listed				
a. Market value	$	2140	$	2145
b. Value of underlying instruments	$	2150	$	2155
2. Unlisted				
a. Market value	$	2160	$	2165
b. Value of underlying instruments	$	2170	$	2175
D. Market value, and the value of the underlying instruments, of naked put contracts:				
1. Listed				
a. Market value	$	2140	$	2145
b. Value of underlying instruments	$	2150	$	2155
2. Unlisted				
a. Market value	$	2160	$	2165
b. Value of underlying instruments	$	2170	$	2175

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[FR Doc. 98–29007 Filed 11–2–98; 8:45 am]
BILLING CODE 8010–01–C

federal register

Tuesday
November 3, 1998

Part III

Department of Education

Direct Grant Programs and Fellowship Programs; Notice

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice identifying direct grant programs and fellowship programs under which the Secretary has invited or expects to invite applications for new awards for fiscal year (FY) 1999.

SUMMARY: This notice identifies programs and competitions under which the Secretary has invited or expects to invite applications for new awards for FY 1999. The notice also announces actual or estimated deadline dates for the transmittal of applications. The notice is intended to help potential applicants in preparing to respond to expected FY 1999 grant competitions.

Note: This notice is advisory only and is not an official application notice of the Department of Education.

Organization of Notice: This notice provides charts, grouped by principal office, of virtually all the Department's direct grant and fellowship competitions for new awards the Secretary has announced or expects to announce for FY 1999. Each principal office is assigned a separate chart as follows:

Chart 1—Office of Bilingual Education and Minority Languages Affairs.

Chart 2—Office of Educational Research and Improvement.

Chart 3—Office of Elementary and Secondary Education.

Chart 4—Office of Postsecondary Education.

Chart 5—Office of Special Education and Rehabilitative Services.

Chart 6—Office of Vocational and Adult Education.

DATES: *Dates of Application Notices.* The actual or estimated date for publication of the application notice for a given program or competition is listed in column two of the charts. Application notices that have already been published in the **Federal Register** can be identified by the **Federal Register** page number, also shown in column two. If a program has yet to publish an application notice, an estimated date is listed.

Applications Available. The actual or estimated date for the availability of an application package for a given program or competition is listed in column three of the charts.

Deadline Dates for Transmitting Applications. The actual or estimated deadline for transmitting applications under a given program or competition is listed in column four of the charts. If a program has yet to publish an application notice, the estimated deadline date is listed. The actual deadline will appear in the **Federal Register.**

Deadline Dates for Transmitting Intergovernmental Reviews. Certain programs identified in this notice are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The actual or estimated deadline date for the transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties is listed in column five of the charts. If a program has yet to publish an application notice, the estimated deadline date is listed. The actual deadline will appear in the application notice to be published in the **Federal Register.** For further information, an applicant under a program subject to the Executive order—and other parties interested in that program—are directed to the appendix to this notice.

ADDRESSES: *For Applications or Further Information.* The address and telephone number for obtaining applications for, or further information about, an individual program are in the actual application notice for that program.

For Users of TDD or FIRS. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Arthur Stewart, U.S. Department of Education, 600 Independence Avenue, SW., room 3652, ROB–3, Washington, DC 20202–4248. Telephone: (202) 708–8515. Internet: Arthur__Stewart@ed.gov

For Intergovernmental Review. The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

SUPPLEMENTARY INFORMATION

Available Funds

The Secretary is publishing this notice in order to give potential applicants adequate time to prepare applications. The amounts of funds listed as available for these programs are estimates and are based on the recently passed FY 1999 appropriation for the Department of Education. Potential applicants should note, however, that some of the competitions listed in this notice may be canceled and some new competitions not listed in this notice may be announced.

Estimated Range and Average Size of Awards

Except for programs and competitions administered by the Office of Special Education and Rehabilitative Services (OSERS), columns six and seven list estimated ranges and average size of awards. The amounts referenced in these columns are advisory and represent the Secretary's best estimates at this time. The average size of an award is the estimate for a single-year project or for the first budget period of a multi-year project. In the application package for an individual program or competition, applicants will receive information about the amount the Secretary intends to make available for each year of a multi-year project.

In the case of programs and competitions administered by the principal components of OSERS, the charts differ with regard to the amount of awards. For programs and competitions of this program office, column six of the charts lists the actual or estimated maximum amount the Secretary will award per year. Applicants will receive further information about funding amounts in the application packages for the individual programs.

In the case of programs and competitions administered by the Office of Postsecondary Education, please note that the reauthorization of the Higher Education Act (Pub.L. 105-244, enacted October 7, 1998) may significantly affect the discretionary grant program competitions and timelines in the chart. Actual deadline dates will appear in the application notices published in the **Federal Register.**

Note: The Department is not bound by any of the estimates in this document. The dates, fiscal information, and number of new awards listed are estimates only and, thus, subject to change. Readers are advised to read the actual individual application notices for these programs or competitions when the notices are published in the **Federal Register.**

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs identified in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgement lien against a debtor's

property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgement is paid in full or otherwise satisfied.

BILLING CODE 4000–01–P

Chart 1 - OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Harry Logel, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., room 5605, Switzer Building, Washington, DC 20202-6510. Telephone: (202) 205-5530. Internet: Harry_Logel@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.194Q Bilingual Education -- State Grant Programs	12/30/98	12/30/98	02/16/99	04/16/99	N/A	N/A	7
84.195A Bilingual Education -- Teachers and Personnel Grant Program	12/30/98	12/30/98	02/23/99	04/23/99	$150,000-$250,000	$200,000	50
84.195C Bilingual Education -- Training for all Teachers	01/25/99	01/25/99	03/15/99	05/14/99	$150,000-$250,000	$200,000	18
84.195C Bilingual Education -- Graduate Fellowship Program	12/23/98	12/23/98	02/16/99	04/16/99	$30,000-$300,000	$150,000	112
84.195E Bilingual Education -- Career Ladder Program	12/30/98	12/30/98	02/23/99	04/23/99	$150,000-$250,000	$200,000	49
84.288S Bilingual Education -- Program Development and Implementation Program	12/30/98	12/30/98	02/16/99	04/16/99	$100,000-$175,000	$150,000	72
84.289P Bilingual Education -- Program Enhancement	12/30/98	12/30/98	02/16/99	04/16/99	$100,000-$150,000	$125,000	80
84.290U Bilingual Education -- Comprehensive School Grants Program	12/26/98	12/26/98	02/26/99	04/26/99	$150,000-$350,000	$250,000	24
84.291R Bilingual Education -- System-wide Improvement Grants	12/30/98	12/30/98	02/26/99	04/26/99	$350,000-$650,000	$500,000	8
84.292A Bilingual Education -- Field Initiated Research	TBA	TBA	TBA	TBA	$50,000-$70,000	$55,000	3
84.293A Bilingual Education -- Foreign Language Assistance/LEA	12/30/98	12/30/98	02/23/99	04/23/99	$50,000-$175,000	$112,500	44

Chart 2 - OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Irene Fernandez, Office of Educational Research and Improvement, U.S. Department of Education, room 205, 555 New Jersey Avenue NW., Washington, DC 20208-5570. Telephone: (202) 219-1570. Internet: Irene_Fernandez@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.203A Star Schools Program--General Grants	11/23/98	12/10/98	02/22/99	04/26/99	$1,500,000-$2,000,000	$1,750,000	5-6
84.215V Partnerships in Character Education Program	11/18/98	12/01/98	02/12/99	04/15/99	$100,000-$1,000,000	$500,000	10
84.287A 21st Century Community Learning Centers	11/19/98	12/07/98	03/08/99	05/10/99	$35,000-$1,000,000	$350,000	100
84.303A Technology Innovation Challenge Grants	11/16/98	12/07/98	02/12/99	04/12/99	$1,000,000-$2,000,000	$1,500,000	20
84.305F - 84.309F Field-Initiated Studies Educational Research Grant Program	11/17/98	12/01/98	02/01/99	N/A	$100,000-$200,000	$150,000	62
84.902B National Assessment of Educational Progress (NAEP) Secondary Analysis Program	10/01/98 (63 FR 52955)	10/09/98	11/30/98	N/A	$15,000-$100,000	$85,000	5 - 7

Chart 3 - OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Alda Giusti, Program Analyst, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W344, Washington, DC 20202-6110. Telephone: (202) 260-1925. Internet: Alda_Giusti@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.004D Civil Rights Training and Advisory Services/Equity Assistance Centers	02/05/99	02/05/99	03/15/99	05/15/99	$600,000-$800,000	$733,400	10
84.083A Women's Educational Equity Act Program--Implementation	11/30/98	11/30/98	02/19/99	04/19/99	$90,000-$200,000	$150,000	2
84.083B Women's Educational Equity Act Program -- Research and Development	11/30/98	11/30/98	02/19/99	04/19/99	$40,000-$75,000	$75,000	1
84.141A Migrant Education -- High School Equivalency Program	11/02/98	11/02/98	01/08/99	03/08/99	$200,000-$495,000	$330,000	21
84.149A Migrant Education--College Assistance Migrant Program	11/02/98	11/02/98	01/08/99	03/08/99	$250,000-$375,000	$300,000	7
84.165B Innovative Programs	11/13/98	11/13/98	01/15/99	03/15/99	$200,000-$500,000	$369,000	8
84.256A Freely Associated States Educational Grant Program	10/15/98 (63 FR 55491)	10/15/98	12/11/98	N/A	$700,000-$800,000	$750,000	6
84.258A Even Start Literacy Programs for Federally Recognized Indian Tribes and Tribal Organizations	02/05/99	02/05/99	04/09/99	06/06/99	$100,000-$200,000	$150,000	1-2
84.282A Public Charter Schools Program	11/30/98	11/30/98	01/29/99	N/A	SEAs $250,000-$5,000,000 Others $25,000-$150,000	$1,750,000 $100,000	20 10
84.310A Goals 2000: Parental Assistance Program	12/01/98	12/01/98	03/01/99	05/03/99	$200,000-$500,000	$280,000	28

Chart 4 - OFFICE OF POSTSECONDARY EDUCATION

Higher Education Programs (HEP)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Don Crews, Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., suite 600, Portals Building, Washington, DC 20024-2142. Telephone: (202) 260-2295. Internet: Don_Crews@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.016A Undergraduate International Studies and Foreign Language Program	03/08/99	03/29/99	05/03/99	07/06/99	Single Inst. $40,000-$90,000 Consortia $75,000-$100,000	$64,000 $90,000	23 4
84.017A International Research and Studies Program	04/12/99	05/03/99	06/01/99	N/A	$40,000-$150,000	$83,000	15
84.019A Fulbright-Hays -- Faculty Research Abroad Program	08/31/98 (63 FR 46369)	09/08/98	11/06/98	N/A	$18,000-$70,000	$43,000	21
84.021A Fulbright-Hays -- Group Projects Abroad Program	08/31/98 (63 FR 46369)	09/04/98	10/26/98	N/A	$30,000-$120,000	$65,000	36
84.022A Fulbright-Hays -- Doctoral Dissertation Research Abroad Program	08/31/98 (63 FR 46369)	09/08/98	11/06/98	N/A	$12,000-$60,000	$24,000	87
84.031A Strengthening Institutions Program	11/04/98	11/04/98	03/10/99	05/09/99	Development $300,000-$350,000 Planning $20,000-$25,000	$325,000 $22,500	44 6
84.031H Institutional Aid -- Eligibility	09/23/98 (63 FR 50960)	10/30/98	12/11/98; *02/15/99	N/A	N/A	N/A	N/A
84.031S Strengthening Institutions Program-- Hispanic Serving Institutions	11/04/98	11/04/98	03/10/99	05/09/99	$300,000-$350,000	$325,000	80

Chart 4 - Office of Postsecondary Education - HEP - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.047A Upward Bound Program	07/15/98 (63 FR 38249)	08/01/98	10/30/98	12/31/98	$200,000-$690,000	$319,000	682
84.047M Upward Bound Math/Science Program	07/15/98 (63 FR 38249)	08/01/98	10/02/98	12/31/98	$200,000-$300,000	$254,000	99
84.120A Minority Science Improvement Program	11/04/98	11/06/98	01/15/99	03/15/99	Institutional $100,000-$200,000 Design $15,000-$20,000 Special $20,000-$150,000 Cooperative $20,000-$500,000	$120,000 $18,000 $25,000 $280,000	22 4 11 4
84.153A Business and International Education Program	09/23/98 63 FR 50963)	09/28/98	11/13/98	01/12/99	$50,000-$90,000	$74,000	22
84.217A Ronald E. McNair Program	07/15/98 (63 FR 38247)	08/01/98	10/02/98	12/31/98	$190,000-$285,000	$215,000	109
84.220A Centers for International Business Education Program	09/23/98 (63 FR 50963)	09/28/98	11/16/98	01/15/99	$150,000-$310,000	$264,000	13
84.229 International Education Language Resource Centers	04/12/99	05/03/99	06/01/99	08/02/99	$200,000-$350,000	$318,000	7
84.269A Institute for International Public Policy	03/16/99	04/01/99	06/01/99	08/02/99	N/A	$1,000,000	1

*The program has two deadline dates for eligibility applications.

Chart 4 - Office of Postsecondary Education - FIPSE - Continued

Fund for the Improvement of Postsecondary Education (FIPSE)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Frank Frankfort, Education Program Specialist, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., room 3600 ROB-3, Washington, DC 20202-5175. Telephone: (202) 260-3704. Internet: Frank_Frankfort@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.116A&B Comprehensive Program	08/22/98 (63 FR 46829)	09/02/98	10/22/98 (preapplication) 03/19/99 (Final application)	05/18/99	$15,000-$150,000	$80,000	80
84.116J Joint US/EU Consortia for Cooperation in Higher Education and Vocational Education	11/30/98	12/01/98	02/01/99	05/07/99	$100,000-$175,000	$136,000	12
84.116P Disseminating Proven Reforms	11/13/98	11/16/98	01/15/99	03/18/99	$120,000-$180,000	$160,000	8
84.116R Controlling the Cost of Postsecondary Education	11/13/98	11/16/98	01/15/99	03/18/99	$100,000-$130,000	$120,000	10

Chart 5 - OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

National Institute on Disability and Rehabilitation Research (NIDRR)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Donna Nangle, National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 600 Independence Avenue, SW., room 3418, Switzer Building, Washington, DC 20202-2645. Telephone: (202) 205-5880. Internet: Donna_Nagle@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.133A Supported Living and Choice for Persons with Mental Retardation	10/01/98 (63 FR 52919)	10/01/98	11/30/98	N/A	$400,000	1
84.133A Rehabilitation for Women with Disabilities	03/01/99	03/01/99	04/30/99	N/A	$300,000	1
84.133A Emerging Disability Populations	03/01/99	03/01/99	04/30/99	N/A	$300,000	1
84.133A Dissemination of Disability and Rehabilitation Research	02/01/99	02/01/99	04/01/99	N/A	$750,000	1
84.133A International Disability Research Information Exchange	03/01/99	03/01/99	04/30/99	N/A	$400,000	1
84.133B Rehabilitation for Persons with Long-term Mental Illness	02/01/99	02/01/99	04/01/99	N/A	$700,000	1
84.133B Family Strategies in Rehabilitation for Children with Emotional and Behavioral Disorders	03/01/99	03/01/99	04/30/99	N/A	$650,000	1
84.133B Rehabilitation for Persons with Disabilities from Minority Backgrounds	12/01/98	12/01/98	02/01/99	N/A	$600,000	1
84.133B Maintenance of Health and Wellness for Persons with Long-term Disabilities	12/01/98	12/01/98	02/01/99	N/A	$700,000	1
84.133B Rehabilitation for Persons with Traumatic Brain Injury	02/01/99	02/01/99	04/01/99	N/A	$650,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - NIDRR - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.133B Measuring Rehabilitation Outcomes	02/01/99	02/01/99	04/01/99	N/A	$700,000	1
84.133B Measuring Disabilities	02/01/99	02/01/99	04/01/99	N/A	$700,000	1
84.133B Rehabilitation Children with Chronic Physical or Traumatic Disabilities	03/01/99	03/01/99	04/30/99	N/A	$700,000	1
84.133B Rehabilitation for Children with Emotional and Behavioral Disorders	03/01/99	03/01/99	04/30/99	N/A	$650,000	1
84.133E Engineering for Telecommunications Accessibility	02/01/99	02/01/99	04/01/99	N/A	$600,000	1
84.133E Engineering for Universal Design	02/01/99	02/01/99	04/01/99	N/A	$600,000	1
84.133F Research Fellowships	06/18/98 (63 FR 33500)	06/18/98	09/30/98	N/A	Merit: $45,000 Distinguished: $55,000	10
84.133G Field Initiated Projects	06/18/98 (63 FR 33501)	06/18/98	09/30/98	N/A	$150,000	30
84.133P Advanced Rehabilitation Research Training Projects	06/13/98 (63 FR 35504)	06/18/98	09/30/98	N/A	$150,000	5
84.133E-3 Wheeled Mobility	10/01/98 (63 FR 52920)	10/01/98	11/30/98	N/A	$900,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - OSEP - Continued

Office of Special Education Programs (OSEP)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: The Grants and Contracts Services Team, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 600 Independence Avenue, SW., room 3080, Switzer Building, Washington, DC 20202-2641. The preferred method for requesting information is to FAX your request to: (202) 205-8717. Telephone: (202) 205-9182.

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.324B Student Initiated Research Projects	08/13/98 (63 FR 43598)	08/20/98	02/05/99	04/06/99	$20,000	12
84.324C Field Initiated Research Projects	08/13/98 (63 FR 43598)	08/20/98	09/28/98	11/27/98	$180,000	14
84.324D Directed Research Projects	04/09/99	04/19/99	06/04/99	08/30/99	$200,000	20
84.324H Center on Access to the General Education Curriculum	04/09/99	04/19/99	06/04/99	08/30/99	$500,000	1
84.324K Research Institutes	04/09/99	04/19/99	06/04/99	08/30/99	$700,000	2
84.324L Early Childhood Research and Training Center on Service Coordination	04/09/99	04/19/99	06/04/99	08/30/99	$500,000	1
84.324M Model Demonstration Projects for Children with Disabilities--Nondirected	08/13/98 (63 FR 43598)	08/20/98	10/05/98	12/04/98	$150,000	18
84.324N Initial Career Awards	08/13/98 (63 FR 43598)	08/20/98	09/28/98	11/27/98	$75,000	4
84.324R Outreach Projects for Children with Disabilities	08/13/98 (63 FR 43598)	08/20/98	10/05/98	12/04/98	$150,000	21

Chart 5 - Office of Special Education and Rehabilitative Services - OSEP - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.324S Research Institute to Improve Results for Adolescents with Disabilities in General Education Academic Curriculums	04/09/99	04/19/99	06/04/99	08/30/99	$700,000	1
84.324T Model Demonstration Projects for Children with Disabilities--Directed	04/09/99	04/19/99	06/04/99	08/30/99	$200,000	12
84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low Incidence Disabilities	09/18/98 (63 FR 50113)	09/28/98	11/09/98	01/08/99	$300,000	26
84.325D Preparation of Leadership Personnel	09/18/98 (63 FR 50113)	09/28/98	11/16/98	01/15/99	$200,000	18
84.325E Personnel Preparation in Minority Institutions	09/18/98 (63 FR 50113)	09/28/98	02/01/99	04/02/99	$200,000	15
84.325H Improving the Preparation of Personnel to Serve Children with High Incidence Disabilities	09/18/98 (63 FR 50113)	09/28/98	12/07/98	02/05/99	$200,000	32
84.325N Projects of National Significance--Nondirected	09/18/98 (63 FR 50113)	09/28/98	11/30/98	01/29/99	$200,000	24
84.325Q Projects of National Significance--Directed	04/09/99	04/19/99	06/04/99	08/30/99	$600,000	8
84.326C Deaf Blind Centers	04/09/99	04/19/99	06/04/99	08/30/99	$200,000	48
84.326E Early Childhood Technical Assistance Center	04/09/99	04/19/99	06/04/99	08/30/99	$4,000,000	1
84.326M Minority Outreach Center	04/09/99	04/19/99	06/04/99	08/30/99	$1,000,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - OSEP - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.326R Regional Resource Centers	11/08/98	11/15/98	12/15/98	02/13/99	$400,000	1
84.326U Deaf Blind Clearinghouse	04/09/99	04/19/99	06/04/99	08/30/99	$400,000	1
84.327A Steppingstones of Technology Innovation for Students with Disabilities	08/13/98 (63 FR 43598)	08/20/98	12/18/98	02/16/99	$200,000	15
84.327D Theater of the Deaf	04/09/99	04/19/99	06/04/99	08/30/99	$800,000	1
84.327L Closed Captioned Television Programs -- Local News and Public Information	04/09/99	04/19/99	06/04/99	08/30/99	$80,000	20
84.327U Closed Captioned Television Programs	09/18/98 (63 FR 50113)	09/28/98	11/23/98	01/22/99	$500,000	15
84.328M Parent Information Centers	01/25/99	02/01/99	03/12/99	05/13/99	$340,000	13

Rehabilitation Services Administration (RSA)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: The Grants and Contracts Services Team, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 600 Independence Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2641. The preferred method for requesting information is to FAX your request to: (202) 205-8717. Telephone: (202) 205-8351

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.129B Rehabilitation Long Term Training -- Vocational Rehabilitation Counseling	07/07/98 (63 FR 36665)	07/10/98	08/31/98	10/30/98	$100,000	19

Chart 5 - Office of Special Education and Rehabilitative Services - RSA - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.129E,F,P,Q, &R Rehabilitation Training:	07/24/98 (63 FR 40002)	07/24/98	09/18/98	11/17/98	$75,000-$100,000	10
84.129E Rehabilitation technology	"	"	"	"	"	3 (max.)
84.129F Vocational evaluation and work adjustment	"	"	"	"	"	3 (max.)
84.129P Specialized personnel for rehabilitation of individuals who are blind or have vision impairments	"	"	"	"	"	3 (max.)
84.129Q Rehabilitation of individuals who are deaf or hard of hearing	"	"	"	"	"	4 (max.)
84.129R Job development and job placement services to individuals with disabilities.	"	"	"	"	"	2 (max.)
84.129W Long Term Training Comprehensive System of Personnel Development	10/16/98 (63 FR 55766)	10/16/98	12/18/98	02/16/99	$75,000-$500,000	10
84.132A Centers for Independent Living	11/16/98	11/16/98	2/26/99	04/26/99	$62,000-$78,000	14
84.132B Technical Assistance for Centers with Independent Living Statewide IN Councils	11/16/98	11/20/98	02/26/99	05/18/99	$668,000	1-2
84.177A Independent Living Services for Older Individuals who are Blind	11/16/98	11/20/98	02/26/99	05/18/99	$214,000	53
84.250H Vocational Rehabilitation Service Projects for American Indians	12/15/98	12/15/98	06/01/99	08/01/99	$350,000	14
84.264A Rehabilitation Continuing Education	07/24/98 (63 FR 40006)	07/24/98	09/25/98	11/24/98	$370,000	3

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Chart 6 - OFFICE OF VOCATIONAL AND ADULT EDUCATION

For further information please contact: Richard L. Smith, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue, SW., room 4529, Switzer Building, Washington, DC 20202-7110. Telephone: (202) 205-5621. Internet: Richard_Smith@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
Teacher Preparation Education Demonstration Grants	TBA	TBA	TBA	TBA	TBA	TBA	TBA
Adult Education Grants for English-as-a-Second Language Demonstrations	TBA	TBA	TBA	TBA	TBA	TBA	TBA

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FOR FURTHER INFORMATION CONTACT: For further information regarding a competition listed in this document, please contact the person whose name appears at the top of the particular chart in which that competition is listed.

Dated: October 27, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer.

Appendix—Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in the actual application notice to the following address: The Secretary, EO 12372–CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in the actual application notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

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STATE SINGLE POINT OF CONTACT
(as of October 20, 1998)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

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3800 N. Central Avenue
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2555 Shumard Oak Blvd.
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NEVADA
Department of Administration
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Carson City, Nevada 89710
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Director, New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 8/P.L. 105–286
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Plant Patent Amendments Act of 1998 (Oct. 27, 1998; 112 Stat. 2780)

H.R. 2186/P.L. 105–290
To authorize the Secretary of the Interior to provide assistance to the National Historic Trails Interpretive Center in Casper, Wyoming. (Oct. 27, 1998; 112 Stat. 2782)

H.R. 2370/P.L. 105–291
Guam Organic Act Amendments of 1998 (Oct. 27, 1998; 112 Stat. 2785)

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Advisory Council on California Indian Policy Extension Act of 1998 (Oct. 27, 1998; 112 Stat. 2818)

H.R. 4079/P.L. 105–295

To authorize the construction of temperature control devices at Folsom Dam in California. (Oct. 27, 1998; 112 Stat. 2820)

H.R. 4166/P.L. 105–296

To amend the Idaho Admission Act regarding the sale or lease of school land. (Oct. 27, 1998; 112 Stat. 2822)

S. 53/P.L. 105–297

Curt Flood Act of 1998 (Oct. 27, 1998; 112 Stat. 2824)

S. 505/P.L. 105–298

To amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes. (Oct. 27, 1998; 112 Stat. 2827)

S. 1298/P.L. 105–299

To designate a Federal building located in Florence, Alabama, as the ''Justice John McKinley Federal Building''. (Oct. 27, 1998; 112 Stat. 2835)

S. 1892/P.L. 105–300

To provide that a person closely related to a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, and for other purposes. (Oct. 27, 1998; 112 Stat. 2836)

S. 1976/P.L. 105–301

Crime Victims With Disabilities Awareness Act (Oct. 27, 1998; 112 Stat. 2838)

S. 2235/P.L. 105–302

To amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers. (Oct. 27, 1998; 112 Stat. 2841)

H.R. 1702/P.L. 105–303

Commercial Space Act of 1998 (Oct. 28, 1998; 112 Stat. 2843)

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H.R. 4558/P.L. 105–306

Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (Oct. 28, 1998; 112 Stat. 2926)

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